

Exhibits

Exhibits to Petition for Reconsideration of Harrisburg City School District

1. Request for Review of Harrisburg City School District (Apr. 3, 2009)
2. Timeline for Harrisburg City School District's Appeal of USAC's 9/20/07 Notification of Improperly Disbursed Funds
3. Memorandum from John Weaver to USAC re question on FRN 849090 (Apr. 9, 2002)
4. Memorandum from John Weaver to USAC re question on FRN 639696 (Apr. 9, 2002)
5. Form 471 (Jan. 18, 2011)
6. Letter from USAC to John Weaver (Feb. 8, 2002)
7. Letter from USAC to John Weaver (Apr. 19, 2002)
8. Criminal Information Filed Against John Weaver and Ronald Morrett (M.D. Pa. Dec. 8, 2003)
9. Service Provider Invoice Forms (Oct. 30, 2002 & Jan. 23, 2003)
10. Service Certification Forms (Nov. 4, 2002 & Feb. 4, 2003)
11. USAC Remittance Statement and Cancelled Check #0120032864 & USAC Remittance Statement and Cancelled Check #0130046648
12. Letter from Julie Botel to John Weaver (June 4, 2003) & Letter from John Weaver to William Gretton (June 19, 2003)
13. Press Release, U.S. Department of Justice, Middle Dist. of Pa. (Dec. 8, 2003)
14. Ronald Morrett Plea Agreement (Dec. 8, 2003)
15. Response of Harrisburg City School District to USAC Detail Exception Worksheet #1
16. Petition for Remission or Mitigation of Forfeiture (Mar. 30, 2005)

Exhibit 1

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review by Harrisburg City)	
School District of March 3, 2009)	CC Docket Nos.
Administrator's Decision on Appeal)	96-45 and 02-6
Funding Year 2001-2002)	
)	
Form 471 Application Number: 256221)	
Billed Entity Number: 125727)	
FCC Reg. Number: 0013480892)	

REQUEST FOR REVIEW OF HARRISBURG CITY SCHOOL DISTRICT

John Nakahata
Linda Coffin
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street NW, Suite 1200
Washington, DC 20036
(202) 730-1320

Counsel to the Harrisburg City School District

April 3, 2009

Table of Contents

Summary.....	i
I. Factual Background.....	4
A. The Bribery Scheme and Its Discovery	4
B. USAC’s Investigations.....	10
C. The Weaver and Morrett Sentencings.....	11
D. USAC’s Belated Recovery Actions.....	13
II. USAC’s Determination that the District Is “At Fault” and Responsible for the Disbursement of Funds for Services Not Received Ignores the Reality of the Bribery Scheme and Well-Established Principles of Agency Law.....	14
A. Ron Morrett and EMO Were the Parties Best Situated to Prevent the Violations.....	15
B. Basic Principles of Agency Law Preclude USAC from Holding the District Vicariously Liable for Weaver’s Fraud.....	17
C. USAC’s New Assertion of Negligent Supervision is at Best 20/20 Hindsight that Would Require the District to Have Foreseen Criminal Acts that USAC Itself Did Not, and Lacks a Reasonable Basis in the Record.....	22
III. Holding the District Responsible When USAC Could Have Obtained Full Restitution from Morrett, But Failed to Do So, is Clearly Erroneous and Manifestly Unjust, and USAC Substantially Prejudiced the District’s Ability to Protect Its Interests.	25
IV. USAC Lacks Jurisdiction to Collect this Claim.	29
V. Conclusion	30

Summary

The Harrisburg City School District seeks review of USAC's decision to hold the school district – and its taxpayers, students and teachers – responsible for paying for the fraudulent acts of a criminal who bribed one of the District's employees to help that criminal defraud the Universal Service Fund. What the school district *is* responsible for is uncovering and reporting the fraud and working with USAC to help it recover improperly disbursed funds. The criminal enterprise was the sole recipient of the funds disbursed as a result of the bribery scheme. Thanks in no small part to the District's timely actions, the criminal enterprise was interrupted, and the criminals apprehended and brought to justice. When these criminals stood before the court for sentencing and judgment, USAC had an opportunity to obtain full, mandatory restitution, which the court would have been required to order. But USAC failed to seek full restitution, and then it failed to make any timely efforts to recover improperly disbursed funds from the actual recipient and its criminal owner. Now, USAC instead demands that another victim of the fraud – the District – pay the restitution USAC failed to obtain. USAC's assessment of responsibility is misplaced, which will only serve to harm the children in one of the poorest school districts in the country.

Having let the criminals escape full restitution, USAC now alleges that the school district should be held responsible for failing to foresee and stop these crimes. But USAC is using 20/20 hindsight to try to hold the District to a higher standard of foreseeability than USAC itself exercised, tantamount to strict liability – all to cover USAC's errors in failing to collect from the actual criminals. This is wholly unjustified, particularly when the school district detected the fraud and reacted immediately to

prevent further harm. Additionally, to the extent USAC is proceeding on a theory of vicarious liability, it wholly ignores well-recognized tenets of agency law that do not impose liability on an employer for the criminal acts of an employee that were clearly outside that employee's scope of employment and conferred no benefit on the employer whatsoever, but rather harmed the employer. In any event, USAC has failed to show that it has been reassigned the responsibility to collect this debt, which Federal Communications Commission rules require to be referred to the Department of Justice, and thus it lacks jurisdiction to seek recovery.

USAC's decision should be reversed because it is manifestly unjust and unsupported by law. The Harrisburg City School District should not be victimized twice – first through the honest services fraud of the criminal beneficiaries and then by USAC forcing the District to pay the proceeds of the fraud that USAC could have obtained from the criminals when they were in the dock for sentencing. Although USAC's failures now preclude an ideal resolution, this is the only result that is just and consistent with common sense and basic principles of agency law.

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REQUEST FOR REVIEW OF HARRISBURG CITY SCHOOL DISTRICT

In accordance with Section 54.721 of the Commission's rules (47 C.F.R. § 54.721), the Harrisburg City School District ("the District") hereby seeks review of the March 3, 2009, decision of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC").¹ In that Decision, in an attempt to salvage recovery of improperly paid funds more than five years after the fact, SLD assigned to the District responsibility for a multi-million dollar "blatant bribery scheme to influence payments under government contracts" – even though the District was itself a victim of the fraud and in no way benefitted from it.² There is no question that the party

¹ Attachment 1 (Letter from USAC to John T. Nakahata (Mar. 3, 2009)("The Decision")). The District's appeal was filed on November 19, 2007. Attachment 2 (Harrisburg City School District's Appeal of the September 20, 2007 Notification of Improperly Disbursed Funds regarding Funding Request Number 639696 (filed November 19, 2007) (without attachments) ("Appeal Letter")); *see also* Attachment 3 (Supplement to Appeal of September 20, 2007 Notification of Improperly Disbursed Funds (Funding Year 2001) (filed April 2, 2008)).

² Attachment 4 (Excerpt from Sentencing Transcript of Ronald Morrett (May 16, 2005)), at 32.

principally responsible for this fraud – and its sole beneficiary – was one of the District’s E-rate service providers, EMO Communications, whose owner and president paid nearly \$2 million in bribes to the District’s director of information technology to induce him to falsely certify that the District had received \$5 million in services that were never delivered. But USAC failed to act diligently and in a timely manner to collect the proceeds of the fraud from EMO or its president, and USAC even allowed EMO’s president, the criminal mastermind of the fraud scheme, to escape what would have been mandatory court ordered restitution of the entire loss that it now seeks to recover from the District. USAC should not now be permitted to cover its mistakes by concocting blame on the District. USAC’s decision is erroneous as a matter of law, lacks a basis in the record, and would result in a manifest injustice if upheld – particularly because USAC’s own failure to seek mandatory restitution of these funds from the criminal mastermind who executed and received the fruits of this fraud was a direct intervening cause of its failure to recover. While USAC’s negligence and delays mean no ideal resolution remains available, the District respectfully requests that, under the unique circumstances of this case, either it be found not to be responsible for the violations – which occurred as a result of the service provider paying bribes to a District employee who then acted in a criminal manner wholly outside of the scope of his employment – or that recovery be waived on account of “hardship, equity, or more effective implementation of overall policy on an individual basis,” pursuant to 47 C.F.R. § 1.3.³

³ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 & CC Docket No. 96-45, FCC 09-16, at ¶ 7 n.21 (rel. Mar. 5, 2009), citing *WAIT Radio v. FCC*, 418 F.2d 1153,1157 (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). See also, e.g., *Request for Review of the Decision of the Universal Service Administrator by Grand Rapids Public Schools*,

USAC's determination of responsibility rests on its claim – asserted for the first time in the Decision – that the District negligently failed to supervise its employee by failing to institute layers of review for its certifications that equipment and services were received. But this argument is just 20/20 hindsight. USAC itself did not foresee the possibility of a certification falsified due to bribery, and thus did not require that such certifications be countersigned – which would itself have created the “layered review” that USAC says should have been imposed. In any event, it is by no means clear that, if such layered processes had been in place, they would have deterred or detected the fraud in which the employee and service provider engaged – or would have prevented the false certifications to USAC. The fraud was furthered concealed because the false certifications claimed receipt of products and services that were to have been installed on laptop servers or provided as maintenance services after the District ultimately received the laptops servers.

By declaring the District responsible for the rule violation that led to the improper disbursement of funds, USAC is seeking recovery from the wrong party at the absolute worst possible time – in the midst of the greatest financial crisis since the Great Depression when the District is already operating at a \$17.5 million deficit. The District is a convenient target for recovery because, unlike the fraud's beneficiary EMO Communications, it cannot go out of business and have its assets dispersed. But that convenient accessibility does not mean that it is fair or right to seek recovery from the District and its taxpayers, school children and teachers. USAC's Decision would victimize the people of Harrisburg not once, but twice, for the service provider's illegal

Grand Rapids, Michigan; Schools and Libraries Universal Service Support Mechanism, 23 FCC Rcd 15413, 15416 n.27 (FCC Telecom. Access Pol. Div., 2008).

scheme. First, the service provider fraudulently deprived the District of the honest services of its employee by paying nearly \$2 million in bribes, and causing the District to expend resources to uncover and respond to the fraud and its aftermath. Second, the District would then be required to pay USAC the proceeds of the fraud – all of which went to the defrauding service provider, none of which went to the District, and all of which the service provider’s owner would have been required to pay to USAC had USAC timely alerted the Court as to its loss.

The Harrisburg City School District thus respectfully asks that USAC’s decision be reversed, and that it be found, under these circumstances, not to have been a party responsible for the fraud.

I. Factual Background

A. The Bribery Scheme and Its Discovery

The District is among the most disadvantaged school districts in the nation. In 1999-2000, over two-thirds of its students performed below the basic level on the Pennsylvania System of School Assessment. Located in Pennsylvania’s state capital, where nearly half of the real estate is government-owned and thus tax exempt, the District has always been extremely challenged. Ninety percent of children in the District live in poverty, based on the number of students who participate in free- and reduced-lunch plans under the National School Lunch Program; this percentage likely understates the poverty level of the District considering that many eligible students do not even complete the applications.

In December 2000, in an effort to reform this struggling urban school system, the Pennsylvania legislature authorized Harrisburg’s Mayor to appoint a Board of Control to

oversee the District. In July 2001, the Board of Control hired a new superintendent who in turn hired a new Deputy Superintendent in August 2001 and a new business manager in December 2001. At that time, John Weaver, a fifteen-year employee of the District, was the District's director of information technology. The District had also hired outside consultants, a firm called E-Rate Consulting, Inc., to advise it with respect to Schools and Libraries Support Mechanism (also known as "E-rate") compliance and to complete E-rate applications. One of the District's E-rate service providers was a local company called EMO Communications.

It was against this backdrop that Ron Morrett, the president and owner of EMO Communications, and John Weaver entered into their bribery scheme with respect to E-rate services. It is not clear precisely when the scheme began. In December 2000, the District posted its Form 470 to solicit proposals for its E-rate supported services for the July 1, 2001-June 30, 2002 school year. That Form 470 (Form 470 Application Number 213710000320520) listed John Weaver as the contact and also shows that Weaver certified the form for the District. The District also filed a Form 471 application in January 2001 (471 # 256221) listing Weaver as the contact person.⁴ The application took a long time to be finally approved, but was ultimately granted.⁵ USAC issued a Funding Commitment Decision Letter for Funding Request Number 639696 on April 19, 2002, providing a commitment of \$6,150,760, for a pre-discount amount of \$6,989,000.⁶ EMO

⁴ Attachment 5 (Form 471 for FRN 639696 (Jan. 18, 2001)).

⁵ Initially, the application was denied. On June 6, 2001, the District filed an appeal, which was granted on February 8, 2002, which then allowed the application to proceed to Program Integrity Assurance Review. Attachment 6 (Letter from USAC to John Weaver (Feb. 8, 2002)).

⁶ Attachment 7 (Letter from USAC to John Weaver (Apr. 19, 2002)). Apparently in response to questions from USAC, on April 9, 2002, Weaver sent USAC a memo stating

Communications was the service provider for the services provided under FRN 639696. Weaver then⁶ filed Form 486, which USAC approved on August 7, 2002, again reflecting the approved pre-discount amount and funding request amounts.⁷

By the time the April 19, 2002 Funding Commitment Decision Letter was issued, Morrett and Weaver had already embarked on their corrupt enterprise. Beginning on or about April 1, 2002, and continuing through May 23, 2003 (less than two weeks before the District discovered potential wrongdoing and suspended Weaver), Morrett made 12 payments to Weaver, totaling over \$1.9 million.⁸

The bribes played a critical role in the scheme. Under USAC procedures for the E-rate program, Morrett's company, EMO Communications, was the service provider for FRN 639696, and accordingly submitted its invoices directly to USAC using a Service Provider Invoice Form (SPIF). However, before EMO Communications could be paid, USAC required the District to provide a signed Service Certification by the District, attesting that the equipment and services on the attached vendor invoice had been delivered and installed, along with a copy of the "detailed vendor invoice."⁹ On October 30, 2002, Morrett submitted to USAC a SPIF falsely claiming to have delivered

that the amount of the funding request was reduced from \$8,802,776.00 to \$6,989,500, with a reduction in the number of terminal servers from 1102 to 875. Attachment 8 (Memorandum from John Weaver to USAC (Apr. 9, 2002)). Also on April 9, 2002, Weaver sent another memo to USAC entitled "In Response to questions on FRN: 639696," explaining that the terminal servers would allow computers in every classroom to connect to the Internet under the control of the teacher, allow the teacher to control and monitor where students went on the Internet, and allow the teacher to control and monitor printing from the Internet from student workstations. Attachment 9 (Memorandum from John Weaver to USAC (Apr. 9, 2002)).

⁷ Attachment 10 (Letter from USAC to Ronald Morrett (Aug. 7, 2002)).

⁸ Attachment 11 (Criminal Information Filed Against Ronald R. Morrett, Jr. and John Henry Weaver (M.D. Pa. Dec. 8, 2003)) at ¶ 13.

⁹ For an example of a Service Certification Form, see Attachment 12.

equipment and services to the District on September 15 and October 15, 2002, and attached false invoices.¹⁰ On November 4, 2002, Weaver, who by this time had received over \$670,000 in bribes from Morrett, falsely certified that the equipment and services had been delivered and installed on those dates, and sent that certification to the District's E-rate consultant, E-Rate Consulting, Inc., which apparently transmitted the certification to USAC.¹¹ Two days later, Weaver received another \$35,000 bribe payment from Morrett.¹² USAC paid EMO \$4.077 million in support for these invoices on November 22, 2002.¹³

Then, on January 23, 2003, Morrett submitted another SPIF falsely claiming to have delivered and installed equipment and services to the District on "01152002" (January 15, 2002), again accompanied by false invoices.¹⁴ On January 29, 2003, Weaver, acting at Morrett's behest and interest, falsely certified that the equipment and services had been delivered.¹⁵ Again, Weaver sent that false certification to the District's E-rate consultant, E-Rate Consulting, Inc., which apparently transmitted the certification to USAC.¹⁶ USAC paid EMO another \$2.073 million for these invoices on May 8, 2003.¹⁷ Together, the amounts listed on these SPIFs and Service Provider Certifications

¹⁰ Attachment 13 (Service Provider Invoice Form (Oct. 30, 2002)).

¹¹ Attachment 12 (Service Certification Form (Nov. 4, 2002)).

¹² Attachment 11 at ¶ 13.

¹³ Attachment 7 to Attachment 14 (George McDonald Declaration, Attachment 7, attached to the Petition for Remission or Mitigation of Forfeiture dated March 30, 2005).

¹⁴ Attachment 15 (Service Provider Invoice Form (Jan. 23, 2003)).

¹⁵ Attachment 16 (Service Certification Form (Jan. 29, 2003)). Weaver does not appear to have faxed the certification to USAC until February 4, 2003.

¹⁶ *Id.* Although the fax does not expressly state that it was sent to E-Rate Consulting, the fax number used is the same as for other faxes sent to E-Rate Consulting. *See, e.g.,* Attachment 12.

¹⁷ Attachment 10 to Attachment 14 (George McDonald Declaration, Attachment 10, attached to the Petition for Remission or Mitigation of Forfeiture dated March 30, 2005).

appear to total the \$6,150,760 in funds covered by the USAC Funding Commitment and Form 486 approval.

In fact, the equipment – laptop servers – were delivered, in various installments, between January 9, 2003 and June 2, 2003.¹⁸ The District received 787 laptop servers from EMO, not the 875 stated on the EMO invoices. But EMO never provided installation of wireless antenna/testing, “upgrade 3/3/0 to 5/5/5, server burn in/load,” or the five-year extended maintenance services for the antenna/server for any of the laptop servers. These would have had to have been installed on the laptop servers or, in the case of maintenance, provided after the fact. It is these latter services, and not the 787 laptop servers themselves, that are the subject of USAC’s recovery effort and this appeal.

Morrett’s and Weaver’s corrupt scheme unraveled due to the persistent efforts of a District employee, Kim Cuff, who was in charge of teacher training. The laptop servers were originally scheduled to be delivered in September and October of 2002. Teacher training on the laptop servers was supposed to have been completed by January 2003, but Weaver repeatedly postponed or cancelled it, stating that he did not have enough space to store the laptop servers. On March 28, 2003, Cuff, who was supposed to run the training sessions, asked Weaver when they would be delivered. She received no response. Cuff emailed Weaver again on April 10, again asking when the laptop servers would arrive, and Weaver told her that they should arrive within two weeks.

Over the next two months, Cuff repeatedly attempted to contact Weaver to find out when the laptop servers would arrive, and Weaver either avoided her or lied to her. She also contacted Morrett, who also lied to her. Finally, on or about June 3, 2003, she

¹⁸ Attachment 17 (IntelliMark Invoices).

brought her concerns to her supervisor, an assistant Superintendent, and to the Business Manager. That same day, the District contacted the Harrisburg Bureau of Police regarding its failure to receive the laptop servers. The Harrisburg police in turn contacted the Federal Bureau of Investigation. The District immediately suspended Weaver, who resigned later that month, citing health reasons.¹⁹ In October 2003, the District also terminated E-Rate Consulting, Inc., the consulting firm that Weaver had hired, and retained new consultants.²⁰

The District thoroughly cooperated with the Justice Department's investigation, which resulted in the December 8, 2003 filing of federal bribery charges against Weaver and Morrett (EMO itself was not charged). In the press release announcing the charges, the Justice Department praised the District for its role in bringing the fraud to light and its cooperation during the investigation:

In announcing the filing of this charge, [the U.S. Attorney and FBI Special Agent In Charge] emphasized that the current administration at the Harrisburg School District and the City of Harrisburg initially discovered this matter, brought it to the attention of federal authorities, and cooperated extensively with all aspects of the government's investigation into this kickback conspiracy. Federal officials praised city and school officials for their initiative in referring this matter and their complete cooperation in all aspects of this investigation.²¹

Weaver and Morrett both pled guilty.²² Weaver and Morrett were ultimately sentenced to three years in prison. In his plea agreement with the United States, Morrett specifically acknowledged that, "pursuant to the Mandatory Restitution Act of April 24,

¹⁹ Attachment 18 (Letter from Julie Botel to John Weaver (June 4, 2003)); Attachment 19 (Letter from John Weaver to William Gretton (June 19, 2003)).

²⁰ The new consultants were Julie Tritt Schell and Debra Kriete, both well-recognized and reputed consultants.

²¹ Attachment 20 (Press Release, U.S. Dept. of Justice, Middle District of Pennsylvania (Dec. 8, 2003)).

²² A third member of the conspiracy, Mark Leshner, also pled guilty.

1996, Title 18 United States Code, Section 3663A, the Court is *required in all instances* to order *full restitution to all victims* for the losses those victims have suffered as a result of the defendant's conduct."²³ Weaver was not sentenced until March 1, 2005, and Morrett was not sentenced until May 16, 2005. Among all conspirators, the total restitution ordered to be paid to USAC was \$2,164,956.12.²⁴

B. USAC's Investigations

On or shortly after the day the charges were announced in December 2003, the District's new E-rate consultants (Tritt Schell and Kriete) contacted SLD Vice President George McDonald and SLD's fraud investigator, Ray Mendiola, to inform them about the charges and outline the District's cooperation with local and federal enforcement agencies. Tritt Schell and Kriete faxed a copy of the charging documents and the press release to USAC and asked that USAC immediately cease all payments to EMO. In January 2004, Tritt Schell and Kriete again contacted USAC and reminded them of the District's willingness to cooperate with USAC's investigation. In a March 29, 2004 letter to McDonald, the District provided USAC with a list of the steps it had taken to ensure that any pending and future requests for payments would be proper.²⁵

SLD conducted its initial site visit in or about May 2004 to review EMO-related records. The District provided USAC with access to necessary records. The District also

²³ Attachment 21 (Plea Agreement of Ronald Morrett (filed Dec. 8, 2003)), at 7 (emphasis added).

²⁴ Weaver and Morrett were ordered, jointly and severally, to pay restitution to USAC totaling \$1,977,516. Attachment 22 (Judgment, *United States v. Weaver* (Mar. 1, 2005)); Attachment 23 (Judgment, *United States v. Morrett* (May 16, 2005)). The remainder was obtained from Mark Leshner. Attachment 24 (Judgment, *United States v. Leshner* (Apr. 22, 2005)).

²⁵ Attachment 25 (Letter from William Gretton, III, to George McDonald (Mar. 29, 2004)).

hired a computer forensics company to attempt to retrieve electronic files from Weaver's computer in order to provide those files to USAC's investigator.

USAC then, in February 2005, conducted a Site Inventory Audit. The District fully cooperated with the audit. As a result of that audit, on March 2, 2005, the District received Detailed Exception Worksheet #1, which stated that the District had received 787 laptop servers (valued at \$1,250,373.91) that were not eligible for E-rate funding.²⁶ Detailed Exception Worksheet #1, however, did not address any of the other services or equipment not provided by EMO – and specifically did not address the services at issue in this appeal.²⁷ Nonetheless, we now know that USAC also contemporaneously concluded that it had improperly disbursed a total of \$5,050,430.95 to EMO Communications for services not provided or for ineligible equipment.²⁸

C. The Weaver and Morrett Sentencings

As noted above, John Weaver was sentenced on March 1, 2005. Although it had already completed its February 2005 Site Inventory Audit, USAC apparently did not convey to federal prosecutors the full magnitude of its loss from Morrett and Weaver's bribery scheme prior to Weaver's sentencing. Thus, the Court ordered Weaver to pay restitution for the amount of the bribes he received, jointly and severally with Morrett and any other co-conspirators.

It was not until March 30, 2003, nearly a month after Weaver's sentencing, that USAC sent a document entitled "Petition for Remission or Mitigation of Forfeiture" to

²⁶ The District responded to Detailed Exception Worksheet #1 on March 30, 2005, arguing that the amount of restitution ordered against the three fraud conspirators should be credited toward any repayment obligation that the District might incur for the 787 laptop servers. Attachment 26 (Detailed Exception Worksheet #1 (Mar. 2, 2005)).

²⁷ *Id.*

²⁸ Attachment to Attachment 3 (Internal Audit Division Memo dated March 10, 2005).

federal prosecutors, informing them that it was a victim of Weaver's offenses. In that document, specifically captioned only with respect to Weaver and specifically referencing only Weaver's offenses, USAC stated that "it paid a total of \$6,150,760 to EMO Communications for equipment and services that were not provided and for equipment that was not eligible for E-rate funding."²⁹ USAC further told federal prosecutors that it "intends to seek recovery of the balance of the funds not covered by the Court's Judgment that USAC has determined it paid for equipment and services that were not provided, and for equipment not eligible for E-rate Program funding -- \$4,173,244 (\$6,150,760 - \$1,977,516) from EMO Communications and/or Harrisburg consistent with FCC rules and requirements and any other applicable law."³⁰ USAC, however, did not serve a copy of this Petition on the District, nor did it tell the District at that time that it was contemplating recovery from the District. USAC also did not file its petition with the Court.

USAC apparently never sent a similar petition to federal prosecutors in connection with to Ron Morrett's crimes or his sentencing, even though his sentencing had not yet occurred, and even though it was Ron Morrett who masterminded the bribery scheme and whose company received USAC's payments. In May 2005, Morrett came before the United States District Court for the Middle District of Pennsylvania for sentencing. At Morrett's sentencing (as it had at Weaver's), the District forwent any claim for restitution for itself, asking that all restitution be directed to USAC. The Court specifically found that "[t]he federal agency involved is the E-Rate program administered by the Universal Services Administration [*sic*], and the schools and library division of the

²⁹ Attachment 14 at 1-2.

³⁰ *Id.* at 3.

Federal Communications Commission [*sic*], and this is the agency that is entitled to full restitution.”³¹ Although the Court took care to inquire as to full restitution, USAC did not inform the Court as to the full extent of the losses it had suffered as a result of Morrett’s crimes, and prosecutors did not appear from their statements in open court to have been aware that USAC had suffered losses exceeding the \$1,977,516 in restitution ordered by the Court in connection with Weaver’s sentencing.

D. USAC’s Belated Recovery Actions

After submitting its March 30, 2005 response, the District heard nothing from USAC for two and a half years. During this period, the District returned to the challenging task of educating its student body – one of the poorest in the country. It was not until September 20, 2007, that USAC issued the Notification of Improperly Disbursed Funds, stating that it was seeking to recover \$2,885,474.96 jointly and severally from the District and EMO “for equipment and/or services that were not delivered to the applicant.”³² The Funding Disbursement Report attached to the Notification stated,

³¹ Attachment 27 (Excerpt from Transcript of Sentencing Hearing of John Weaver (Mar. 1, 2005)), at 44; *see also* Attachment 4 (Excerpt from Transcript of Sentencing Hearing of Ronald Morrett (May 16, 2005)), at 33. At the Weaver hearing, the Court was clearly referring to USAC and its Schools and Libraries Division, as well as the FCC, when it referred to the “Universal Services Administration” and “the schools and library division of the Federal Communications Commission.” At Morrett’s sentencing hearing, Morrett’s attorney represented that EMO would forgive certain outstanding amounts allegedly owed to EMO by the District. That representation proved inaccurate, as EMO later initiated legal process against the District for outstanding indebtedness. No further action has occurred since the Writ of Summons was issued.

³² Attachment 28. In a conversation with USAC’s counsel, USAC clarified that the Notification of Improperly Disbursed Funds covered services that were not received, and not the laptop servers addressed by Detailed Exception Worksheet #1.

“USAC has determined that the applicant and service provider are responsible for this rule violation.”³³

The District appealed that decision to USAC on November 19, 2007, as contrary to both the facts, and to well-recognized principles of agency law that do not hold an employer liable for an employee’s crimes that are outside the scope of employment and do not benefit the employer.³⁴ The District also pointed out that USAC’s failure to seek mandatory restitution from Morrett meant that it was now seeking recovery from a victim while letting the principal beneficiary go free. The District further argued that USAC lacked jurisdiction because it has not asserted that the U.S. Department of Justice has returned to it the authority to pursue the collection of this claim.³⁵ USAC denied the appeal by letter dated March 3, 2009. This appeal follows.

ARGUMENT

II. USAC’s Determination that the District Is “At Fault” and Responsible for the Disbursement of Funds for Services Not Received Ignores the Reality of the Bribery Scheme and Well-Established Principles of Agency Law.

USAC’s determination that the District is responsible for the disbursement of funds for services not received – and its concomitant decision to seek recovery from the District – ignores the facts, ignores the Commission’s guidance as to when an applicant should be determined to be responsible, ignores the law of agency, and ignores good old-

³³ Attachment to Attachment 28. The District does not know whether EMO Communications is a going concern or whether it is effectively judgment-proof. Assuming the latter, which seems likely for a small company whose president was sent to prison for bribery, USAC’s request will fall entirely on the District’s shoulders.

³⁴ Appeal Letter at 8, 10-12.

³⁵ The District also argued that USAC’s Notification of Improperly Disbursed Funds was inadequate to permit sufficient response.

fashioned common sense. Indeed, USAC's determinations would further victimize the victim.

The District was a direct victim of the fraud perpetrated by John Weaver and Ron Morrett. At Morrett's behest, Weaver defrauded the District of his honest services and violated his fiduciary duty to the District by falsely certifying that the District had received services that were never provided – all for the benefit of EMO Communications. The plain truth was that, unbeknownst to the District, Weaver had ceased acting on the District's behalf and was acting instead on behalf of himself, Morrett and EMO. The stolen money went to EMO, not the District. With the exception of the bribes themselves – which went to Weaver – EMO and Ron Morrett were the sole beneficiaries of Morrett and Weaver's illicit enterprise with respect to the services for which USAC now seeks recovery in the Decision.

A. Ron Morrett and EMO Were the Parties Best Situated to Prevent the Violations.

As the Commission has set forth, “recovery actions should be directed to the party or parties that committed the rule or statutory violation in question.”³⁶ In making that determination, USAC must consider “which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation.”³⁷ The Commission gave examples of when recovery from a school or library would be appropriate, and when recovery from a service provider would be appropriate:

³⁶ *Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Schools and Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report and Order, FCC 04-181, 19 FCC Rcd 15252 15255 ¶10 (2004) (“*Fourth Report and Order*”).

³⁷ *Id.* at 15257 ¶15.

- Recovery against a *school or library* is appropriate if it “commits an act or omission that violates our competitive bidding requirements, our requirement to have necessary resources to make use of the supported services, the obligation to calculate properly the discount rate, and the obligation to pay the appropriate non-discounted share.”³⁸
- Recovery against a *service provider* is appropriate if it “fails to deliver supported services within the relevant funding year” or “fails to properly bill for supported services.”³⁹

Applying this guidance to the facts here, it is clear that EMO, the service provider, is the responsible party, along with its President, Ron Morrett. EMO “fail[ed] to deliver supported services within the relevant funding year” – indeed, it failed to deliver them at all. Furthermore, it was Morrett, EMO’s principal, who paid Weaver to falsify his certifications and who himself submitted false SPIFs to USAC. EMO is clearly the party that “was in a better position to prevent the statutory or rule violation, and which committed the act or omission that forms the basis for the statutory or rule violation.”⁴⁰ The District has been accused of none of the things that the Commission considers appropriate grounds for seeking recovery against a school or library.

USAC’s bases for declaring the District to be jointly liable come down to two: that Weaver was the District’s employee when he made the false certifications at the behest of Morrett, and that, purportedly, the District negligently failed to supervise its employee. Both these bases lack merit.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 15257 ¶15.

B. Basic Principles of Agency Law Preclude USAC from Holding the District Vicariously Liable for Weaver's Fraud.

In the Decision, USAC bases its finding that the District “was also in a position to prevent the rule violation” on the fact that “[t]hrough Weaver, the District certified to USAC on the Service Certification Forms that it received goods and services from EMO.”⁴¹ Moreover, USAC asserts, “Because [the District] authorized Weaver to sign funding requests submitted to USAC as well as the service certifications on its behalf, [the District] is found to have known that that [sic] the violations occurred and therefore is responsible for the violations.”⁴² In reaching these conclusions, however, USAC ignores the substantial body of agency law showing that Weaver’s actions are not chargeable to the District where Weaver committed a crime for his own benefit and not for the benefit of his employer. The District presented this case law to USAC in detail,⁴³ which USAC has ignored entirely in the Decision.

Under agency law, even for negligence, an employer can only be held vicariously liable for the acts of an employee committed “*within* the scope of the employment.”⁴⁴ The “core issue” when evaluating whether an employee’s actions fell within the scope of

⁴¹ Decision at 2.

⁴² Decision at 3.

⁴³ Appeal Letter at 10-12.

⁴⁴ *R.A. v. First Church of Christ*, 748 A.2d 692, 699 (Pa. Super. Ct. 2000) (citing *Fitzgerald v. McCutcheon*, 410 A.2d 1270, 1271 (Pa. Super. Ct. 1979)) (emphasis added). The agency issues in the instant dispute are governed by common-law agency principles, not the law of any particular state. See *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 740 (1989) (“In past cases of statutory interpretation, when we have concluded that Congress intended terms such as ‘employee,’ ‘employer,’ and ‘scope of employment’ to be understood in light of agency law, we have relied on the general common law of agency, rather than on the law of any particular State, to give meaning to these terms.”). Pennsylvania courts, like most courts, follow the Restatement (Second) of Agency, which the Supreme Court has called “a useful beginning point for a discussion of general agency principles.” *Burlington Indus. v. Ellerth*, 524 U.S. 742, 755 (1998).

his authority is whether he intended those actions to serve his employer. *Siemens Bldg. Tech., Inc. v. PNC Fin. Servs. Group*, 226 Fed. Appx. 192, 196-97 (3d Cir. Apr. 3, 2007) (refusing to impose vicarious liability when a corporation's employee forged payroll checks for her own benefit and later cashed them at the plaintiff bank). It is the plaintiff's burden to prove that the employee "was motivated 'at least in part, by a purpose to serve'" his employer. *Id.* at 196; *see also* Restatement (Second) of Agency § 228 (2004) ("Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or *too little actuated by a purpose to serve the master.*") (emphasis added).

In the instant proceeding, Weaver was plainly acting outside the scope of his employment, which USAC essentially concedes, stating "arguably [Weaver's] actions were outside the scope of employment."⁴⁵ Nothing he did was intended to, or did, benefit his employer – the District – in any way. He did not, for example, overbill the government, skim money off the top of the disbursement and give the rest to the District. Had he done so, his actions conceivably could have fallen within the scope of his employment, as the District would still have received some benefit from his actions. *See Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 13 (1991) (affirming an insurance company's vicarious liability when its employee's actions, although unauthorized, economically benefited the company). But the District never received any of the services at issue in this Decision.⁴⁶ Nor did it receive any of the funds disbursed by USAC – all of

⁴⁵ Decision at 4.

⁴⁶ The Notification of Improperly Disbursed Funds specifically does not include the laptop servers that were also funded by FRN 639696. Those laptop servers were the subject of Detailed Exception Worksheet #1 and are not included in the Notification.

which went directly to EMO. EMO was the sole beneficiary of the fraud with respect to these services.

The Third Circuit has declined to hold an employer responsible for the acts of a rogue employee in circumstances strikingly similar to those at issue here. In *Estate of Beim v. Hirsch*, 121 Fed. Appx. 950 (3rd Cir. Feb. 11, 2005), David Hirsch concocted a check-kiting scheme (just as Morrett concocted the fraud scheme at issue in the instant matter). To help him carry out that scheme, Hirsch enlisted the help of a bank teller (just as Morrett enlisted Weaver). The teller would lie to potential victims of the scheme about the amount of money that Hirsch had in the bank; she would execute official cashier's checks on his account to assist with the scheme; and she would conceal any overdrafts that Hirsch made. *Id.* at 951-52. In exchange for this, Hirsch gave the teller approximately \$7,000 in bribes. After the scheme was discovered, the victims sued the bank for which the teller had worked (among other parties), arguing the bank should be vicariously liable for its employee's participation in the scheme.

The district court granted summary judgment for the bank, stating that "vicarious liability could not be established where an employee's conduct 'would be "outrageously criminal" and "not in any sense in the service of the employer's interest."'" *Id.* at 953 (quoting *Gotthelf v. Prop. Mgmt. Sys., Inc.*, 459 A.2d 1198, 1200 (N.J. Super. Ct. App. Div. 1983)). The district court also noted that "[t]he fact that [the teller] received approximately \$7,000 in gifts from Hirsch was additional evidence that [the teller's] illegal conduct was entirely in furtherance of her own personal interests." *Id.* The Third Circuit affirmed the district court's decision, finding ample evidence that the teller "was acting out of self-interest rather than a purpose to serve" the bank.

This case is on all fours with *Hirsch* and the many other cases holding that when a rogue employee acts for his own benefit, not the benefit of his employer, the employer should not be subjected to vicarious liability. *See also, e.g., Attallah v. United States*, 955 F.2d 776, 781-82 (1st Cir. 1992) (“Essentially, there must be some link between the intentional criminal act committed by the employee, and the legitimate interests of the employer.”); *Shaup v. Jack D’s, Inc.*, No. 03-5570, 2004 U.S. Dist. LEXIS 16191, at *4 (E.D. Pa. Aug. 17, 2004) (“Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or *too little actuated by a purpose to serve the master.*”) (emphasis added) (internal quotation marks and citation omitted).

That principle applies with even more force here, where the District not only did not *benefit* from Weaver’s actions, but was actually *harmed* by them. As a direct result of Weaver’s fraud, the District was forced to expend scarce resources for outside investigation, legal representation with respect to the prosecutions of Morrett and Weaver, and forensic support for USAC’s investigations. Those expenses have totaled more than \$150,000 to date. In addition, the District had its legitimate E-rate support halted for over a year, creating hardship for itself and its innocent vendors. *See Todd v. Skelly*, 120 A.2d 906, 909 (Pa. 1956) (“Where an agent acts in his own interest which is antagonistic to that of his principal, or commits a fraud for his own benefit in a matter which is beyond the scope of his actual or apparent authority or employment, the principal who has received no benefit therefrom will not be liable for the agent’s tortious act.”); *Cover v. Cushing Capital Corp.*, 497 A.2d 249, 252-53 (Pa. Super. Ct. 1985). (refusing to impose vicarious liability when a broker-dealer’s fraud scheme “was outside

the scope of his employment and was antagonistic to his principal,” and when his employer “had no knowledge of [his] personal machinations, which were calculated to line his pockets at the expense of his friends and customers”). To hold the District vicariously liable for Weaver’s fraud would be to punish it twice for a crime that it did not even commit.

Finally, this is not a situation where vicarious liability can or should be established based upon an “apparent agency” or “aided by the agency” analysis, *see* Restatement (Second) of Agency § 219(2)(d). This case “involves misuse of actual power, not the false impression of its existence,” making apparent agency analysis inapplicable. *See Burlington Indus. v. Ellerth*, 524 U.S. 742, 759 (1998). Similarly, cases applying “aided by the agency” analysis deal with “actions brought under very specific statutory schemes designed to govern sexual harassment and other employment-related claims.” *Siemens*, 226 Fed. Appx. at 198. To apply that analysis to a fraud claim where the employee in no way acted to benefit his employer “would, in effect, strip certain prongs from the ‘scope of employment’ aspect of the *respondeat superior* test” and would constitute “a massive shift in the New Jersey law of agency” (which, like most courts, follows the Second Restatement). *Id.*

As a substitute for analysis, USAC argues that “in the context of the audit finding, [the District] did not dispute that it was bound by the improper conduct of its employee, John Weaver.”⁴⁷ That assertion attempts to draw an admission from omission wholly out of context. The audit finding, Detailed Exception Worksheet #1, did not at all address the question of whether the District should be liable for the services and equipment in dispute

⁴⁷ Decision at 4.

here: indeed, it did not address those services. The District's response to Detailed Exception Worksheet #1 was limited to the 787 laptop servers it did receive, for which USAC was questioning the E-rate eligibility. The District did not challenge Weaver's authority with respect to those 787 laptop servers, as it actually did receive them.

USAC's Decision fails to acknowledge any of this law of *respondeat superior*, which shows that Weaver's actions here are not chargeable to the District. Weaver essentially became Morrett's rather than the District's agent once he accepted the bribes. Accordingly, USAC erred by basing its finding of responsibility and knowledge of the false certification on Weaver's actions, which were solely for the benefit of himself and EMO, and not for the benefit of his employer.

C. USAC's New Assertion of Negligent Supervision is at Best 20/20 Hindsight that Would Require the District to Have Foreseen Criminal Acts that USAC Itself Did Not, and Lacks a Reasonable Basis in the Record.

In its Decision, USAC for the first time raises the rationale that the District should be held liable for the fraud perpetrated by one of its employees (Weaver) because it did not "deter" him from the crime, under a theory that the District negligently supervised its employee.⁴⁸ However, the mere fact of the commission of a crime, with nothing more, is not *res ipsa loquitur* evidence creating a rebuttable presumption of negligence on the part of an employer.

To support this new legal theory of negligent supervision, USAC cites a single case, *Mullen v. Topper's Salon and Health Spa, Inc.*, 99 F. Supp. 2d 553 (E.D. Pa. 2000), for the proposition that an employer can be held liable for negligent failure to supervise an employee that harms a third party if the harm is "reasonably foreseeable." Relying on

⁴⁸ Decision at 3 (USAC Response to "HCSD Argument 3").

this case, USAC asserts that “Weaver’s actions were reasonably foreseeable because [the District] failed to exercise ordinary care to prevent the fraud by not having a process or layers of review in place to avoid such a fraud.”⁴⁹

But the facts here are not at all close to the facts that the district court in *Mullen* found sufficient to state a claim under state law for negligent failure to supervise. In *Mullen*, the plaintiff alleged that she had *notified* the employer of the ongoing harassment in the workplace after which time future harassment became “reasonably foreseeable.” *Id.* at 556. The court’s decision to let the claim proceed hinged on this allegation that the employer had reason to know about ongoing harassment “*after it was reported*” but did nothing about it. *Id.* at 556 (emphasis added). As support for the sufficiency of the employee’s claim, the court cited the Restatement (Second) of Torts ¶ 317, which provides that an employer has a duty of reasonable care to control an employee acting outside the scope of his employment only if the employer “knows or should know of the necessity and opportunity for exercising such control.” The notes to this section go on to explain:

The mere fact that the servants are . . . misconducting themselves upon the master’s premises is not enough to make the master liable. It is necessary to show that the master knew of the practices, and that he did not take the appropriate steps to stop them; or at least that he reasonably should have discovered them. *Id.*

Here, there is absolutely no suggestion that the District knew Weaver was receiving bribes and submitting false certifications but failed to act. Weaver had been a District employee for fifteen years; he was not a recent hire with whom the District had no experience. Weaver’s malfeasance came to light because of the diligence of other

⁴⁹ Decision at 4.

District employees. And once it suspected Weaver's malfeasance, the District immediately suspended Weaver and summoned law enforcement. Moreover, the District cooperated with law enforcement and USAC, by aiding law enforcement to act promptly to apprehend Weaver and Morrett, and by assisting USAC to determine the extent of its losses in a timely manner, before Weaver and Morrett had been sentenced.

Moreover, USAC's assertion that Weaver acted without review ignores the fact that the District did employ an independent contractor – E-Rate Consulting – to work with Weaver and to ensure compliance with E-rate rules.⁵⁰ The fraudulent certifications were, in fact, transmitted by Weaver to E-Rate Consulting, which then sent the certifications on to USAC. This outside contractor raised no concerns about the validity of the certifications or the District's processes.

Furthermore, USAC does not make clear how “layers of review” in this setting would have “deterred” or “prevented” Weaver from committing fraud, which by its nature involves intentional deception. In particular, this fraud involved the submission of fabricated invoices and certifications to USAC, handled not just by Weaver, but by the District's consultant. Furthermore, the services not delivered were ones that were supposed to be installed on the laptop servers, or provided after the fact, which makes them harder to deter through “layered review.” The laptop servers themselves, after all, were actually – albeit belatedly – delivered. As additional support for USAC's assertion of negligence against the District, USAC recycles the argument that the District is responsible because John Weaver signed fraudulent certifications, in particular that his signature “certifying receipt of goods and services bound the District and formed the

⁵⁰ After the fraud was discovered, the District terminated these consultants and brought in a new team to review all of its E-rate applications.

basis of the rule violation.” But that is a strict liability standard, not one based in negligence. And USAC itself apparently did not reasonably foresee these types of bribery schemes or the need for documented "layered review" when it designed the form beneficiaries used to certify receipt of supported services. Had it done so, and thought it effective, USAC would have required the countersignature of a second District senior employee on the certification form -- which it did not do. Simply stated, USAC is now applying 20/20 hindsight to hold the District to a higher standard of foresight that it exhibited itself.

USAC’s assertion that the District negligently supervised Weaver does not withstand scrutiny on the facts of this case: there is no basis for concluding that the District had knowledge of Weaver’s misdeeds and failed to stop them. USAC fails to support its conclusion with specific facts. USAC is, in reality, attempting to hold the District strictly liable for Weaver’s misdeeds, which is not permitted by law. Accordingly, USAC’s conclusion that the District engaged negligent supervision of Weaver should be set aside.

III. Holding the District Responsible When USAC Could Have Obtained Full Restitution from Morrett, But Failed to Do So, is Clearly Erroneous and Manifestly Unjust, and USAC Substantially Prejudiced the District’s Ability to Protect Its Interests.

The Commission also should not find the District to be a responsible party under the unique circumstances presented here because USAC could have obtained full restitution from Morrett, the fraud perpetrator and president and owner of EMO, which received all the proceeds of the fraud. As the criminal mastermind and chief beneficiary stood before the United States District Court for the Middle District of Pennsylvania for sentencing and judgment, all that USAC had to do to ensure that he was divested of all

the ill-gotten proceeds of his fraudulent scheme was to inform the Court that its losses exceeded the amounts of the bribes paid. But it did not do so, allowing the chief criminal to escape substantial and mandatory restitution. USAC's failure to seek full restitution from Morrett at the time of sentencing significantly prejudiced the District, particularly as EMO now appears to be judgment-proof. Moreover, USAC's more than two-year delay in even beginning to seek recovery from EMO – and its further unwarranted delay in actually billing EMO until just this month – has ensured that it will no longer be able to collect any funds from EMO.

The fact that more than \$5 million in funds were disbursed for services not received as a result of Morrett and Weaver's fraudulent enterprise was clearly known to USAC prior to Morrett's sentencing, and likely even to Weaver's. The District notified USAC about the bribery scheme on or about the day that criminal charges were announced – December 8, 2003, as soon as the details were publicly known. The District provided copies of the indictments to USAC, which detailed the bribery scheme and the dates and amounts of the bribes. The District fully cooperated with both USAC site visits, including the site inventory audit conducted in February 2005, which was completed a month before Weaver was sentenced and more than two months before Morrett was sentenced. That audit was the only one conducted by USAC, and it is the apparent basis its finding that \$5,050,430.96 was disbursed for services that were not provided. The District memorialized this knowledge in the memorandum it sent to federal prosecutors on March 30, 2005 with respect to Weaver's sentencing – which had already occurred.

The Decision fails to acknowledge the significance of USAC's knowledge and its subsequent failures to seek restitution. Under the Mandatory Victims Restitution Act of 1996, 18 U.S.C. §§ 3663A, 3664 *et seq.*, the Court had no discretion to award less than full restitution.⁵¹ USAC could have obtained the entire \$5,050,430.06 that it now claims was disbursed for services not delivered, leaving no amount to be recovered from the District – and Morrett in his plea agreement had already acknowledged that he was required to pay all mandatory restitution.

Yet, inexplicably, USAC did not seek full restitution from Morrett as part of his sentence. Had USAC presented the court with the proof of its loss that it uses as the basis for the Decision – facts that were clearly in USAC's possession at that time – the Court would have had no alternative but to order Morrett to disgorge not just whatever portions of the bribes could not be disgorged from Weaver, but additional amounts to cover the fruits of the bribery scheme as well – all of which flowed to EMO and presumably through EMO to Morrett.⁵²

In the Decision, USAC asserts that it informed “the government” on March 30, 2005 that it had paid EMO for ineligible equipment and services not provided.⁵³ Although it is true that USAC did, on March 30, 2005, submit to federal prosecutors a

⁵¹ *United States v. Lessner*, 498 F.3d 185, 201 (3d Cir. 2007) (“Under 18 U.S.C. § 3663A, *full restitution is mandatory* when an identifiable victim has suffered pecuniary loss and the defendant is convicted of ‘an offense against property’ under Title 18, including ‘an offense committed by fraud or deceit.’”) (quoting 18 U.S.C. § 3663A(a)(1), (c)(1)) (emphasis added); *United States v. Zakhary*, 357 F.3d 186, 189 (2d Cir. 2004) (stating that the MVRA “requires a court to order full restitution to the identifiable victims of certain crimes, including fraud, without regard to a defendant’s economic circumstances”).

⁵² See Notification Letter, Funding Disbursement Report (Sept. 20, 2007) (reducing the total disbursed amount by the amount of court-ordered restitution to determine the recovery amount being sought here) (Attachment 29).

⁵³ Decision at 4.

Petition for Remission or Mitigation of Forfeiture, it did so only with respect to *Weaver's* already completed sentencing. It never submitted a similar petition with respect to *Morrett's* upcoming sentencing – even though Morrett was the recipient of all of the improperly disbursed funds and was the defendant who had yet to come before the court for final judgment. Moreover, although USAC told federal prosecutors that it might recover any additional amounts from the District, it did not so inform the District or the Court, either at that time or at the time of Morrett's sentencing.

USAC's failure to seek the additional restitution from Morrett, and even its failure to inform the District prior to Morrett's sentencing that it would seek recovery from the District, severely compromised the District's ability to protect its interests. At the time of the sentencing, the District had received no indication from USAC that USAC intended to seek to obtain the fruits of the fraud from the District, a fraud victim, rather than Morrett and EMO, the fraud beneficiaries. Thus, the District could not have submitted at Morrett's sentencing its own claim for restitution of the amounts that USAC would not demand until over two and a half years later.

USAC has further compounded the problem through its lack of timely pursuit of EMO itself. By waiting two and a half years to even issue its initial Notification of Improperly Disbursed Funds in 2007, USAC allowed EMO to go out of business – a result that was entirely foreseeable given that its president and owner was in jail. EMO does not appear to have responded to the 2007 Notification. Adding further insult to injury, USAC apparently stayed collection of amounts from EMO while it considered the District's appeal, and has only now issued its collection invoice to EMO.⁵⁴

⁵⁴ Attachment 30 (Invoice from USAC to EMO Communications, dated March 6, 2009).

Under these circumstances, the Commission should find that USAC's own actions have severed any possibility that the District could be held responsible to pay for the violations perpetrated by Morrett, EMO and Weaver. The District discovered the potential wrongdoing, immediately reported the matter to law enforcement, assisted law enforcement and USAC fully, all of which resulted in criminal convictions that put USAC in the position to be able to claim mandatory restitution from the criminal perpetrators. But at that point, USAC fumbled, and failed to take the simple step of informing the Court that it had additional losses for which it was required by law to be awarded full restitution. It would be a gross injustice to now require the District, its schoolchildren, teachers and taxpayers, to bear the brunt of USAC's inattention and negligence.

IV. USAC Lacks Jurisdiction to Collect this Claim.

USAC's Decision must also be reversed because USAC has not established its jurisdiction to issue its Notice of Improperly Disbursed Funds and to pursue collection under the circumstances of this case. By Commission rule, claims of fraud are required to be referred to the Justice Department. *See* 47 C.F.R. § 1.1902(c) ("Claims... in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims.... [T]he Commission shall promptly refer the case to the Department of Justice for action."). After referral has been made, the Justice Department, "[a]t its discretion... may return the

claim to the forwarding agency for further handling in accordance with the standards in the FCCS,” *id.*, but that does not appear to have occurred here.

The District raised this jurisdictional issue directly in its appeal to USAC, pointing out that if the fraud claim at issue here has not been returned to the Commission, then Section 1.1902(c) makes clear that neither the Commission nor USAC are authorized to seek recovery from the District. It is only after referral and the subsequent, discretionary return to the Commission that the Commission – and by extension, USAC – have the power to pursue a fraud claim.

USAC failed to address this issue entirely in its Decision. Nothing in USAC’s Notification or anything else in the record indicates that the Justice Department has returned the claim to the Commission. Even if Section 1.1902(c) were to be considered unclear in the instant context, USAC is specifically prohibited from interpreting it without first seeking guidance from the Commission, which there is no indication that it has done here. *See* 47 C.F.R. § 54.702(c) (“The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”); *In re Incomnet*, 463 F.3d 1064, 1072 (9th Cir. 2006).

V. Conclusion

The Commission in its review of USAC’s decision cannot and should not find that the District is responsible for the disbursement of funds for services not received. At this point, this is not a case that presents any ideal resolution. Ideally, the improperly disbursed funds would have been recovered from Morrett and EMO, the clear

beneficiaries of the fraud. But because of its negligence and inattentiveness, USAC allowed that principal beneficiary and mastermind of the criminal fraud to escape full restitution, and it prejudiced the District's ability to protect its own interests. At this juncture, the Commission's goal should be to make the findings that achieve the most equitable result under these unique and difficult circumstances.

The most equitable result is to find that the District was a victim of the criminal fraud perpetrated by Morrett, and is not responsible for the violations. When the District's employee falsified certifications that the District had received equipment and services from EMO, he clearly did so in response to Morrett's bribes, and thus wholly outside the scope of his employment. He was acting solely for his own benefit – and not the District's – in furtherance of the bribery scheme perpetrated by Morrett on behalf of EMO. In seeking to recover the fruits of the fraud from the District, USAC seeks to expand vicarious liability beyond the scope recognized by the courts.

Nor should the Commission endorse USAC's newly discovered theory of negligent supervision. USAC imposes on the District an expectation of foresight with respect to Morrett's criminal bribery enterprise that USAC itself did not exhibit when it designed the E-rate invoicing and certification forms – which did not require countersignatures. Moreover, the District did not allow Weaver to act alone, but had hired a consulting firm to oversee its E-rate compliance and to design its systems. Given the District's limited financial resources and extraordinary academic challenges, the District did its best to exercise due care. To suggest that the District should have prevented this illegal scheme, conducted by sophisticated criminals with nearly unlimited resources, is pure folly.

The \$5 million in proceeds from this illegal scheme went somewhere – and the one place that everyone knows it didn't go is to the District. In concluding that the District is responsible for the violation, USAC seeks recovery from the wrong party. Accordingly, the Commission should overturn USAC's Decision that the District is responsible for the service provider receiving payment for services and/or products that were not delivered to the District.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Nakahata", is written over a horizontal line.

John Nakahata

Linda Coffin

HARRIS, WILTSHIRE & GRANNIS LLP

1200 18th Street NW, Suite 1200

Washington, DC 20036

(202) 730-1320

Counsel to the Harrisburg City School District

Date: April 3, 2009

Exhibit 2

**Timeline for Harrisburg City School District's Appeal of
USAC's 9/20/07 Notification of Improperly Disbursed Funds**

- **December 2000:** Pennsylvania legislature authorizes Harrisburg's Mayor to appoint a Board of Control to oversee the Harrisburg City School District; the District posts its Form 470 to solicit proposals to be funded by the E-rate support mechanism for the July 1, 2001-June 30, 2002 school year.
- **April 1, 2002:** Ron Morrett of EMO Communications, Inc. pays the first of twelve bribes to John Weaver, the District's director of information technology. The bribes eventually total over \$1.9 million.
- **April 19, 2002:** USAC issues a Funding Commitment Decision Letter for Funding Request Number 639696, providing a commitment of \$6,150,760, for a pre-discount amount of \$6,985,000.
- **October 30, 2002:** Morrett submits to USAC a Service Provider Information Form (SPIF) falsely claiming to have delivered laptop servers to the District on September 15 and October 15, 2002.
- **November 4, 2002:** Weaver falsely certifies that the laptop servers have been delivered and installed.
- **November 26, 2002:** USAC pays EMO \$4,077,075.20.
- **January 23, 2003:** Morrett submits another SPIF falsely claiming to have delivered laptop servers to the District and installed them on January 15, 2002.
- **January 29, 2003:** Weaver falsely certifies that those services have been delivered.
- **March 28, 2003:** District employee Kim Cuff, who was supposed to train teachers on how to use the laptop servers, asks Weaver when the servers will be delivered and receives no response.
- **April 10, 2003:** Cuff again asks Weaver when the laptop servers will arrive; Weaver tells her that they should arrive within two weeks. They do not.
- **May 8, 2003:** USAC pays EMO \$2,073,684.80.
- **May 23, 2003:** Morrett pays his final bribe to Weaver.
- **June 3, 2003:** Cuff alerts her supervisor and the District Business Manager regarding the nondelivery of the laptop servers. Also that day, the District contacts the Harrisburg Bureau of Police regarding the same. The Harrisburg police in turn contact the Federal Bureau of Investigation.
- **June 4, 2003:** The District suspends Weaver.

- **June 19, 2003:** Weaver resigns, citing health reasons.
- **October 2003:** The District terminates E-rate Consulting, Inc., a consulting firm that Weaver had hired, and retains new consultants, Julie Tritt Schell and Debra Kriete.
- **December 8, 2003:** The United States Attorney for the Middle District of Pennsylvania files federal bribery charges against Weaver and Morrett; EMO Communications is not charged. On or about that day, Tritt Schell and Kriete USAC about the charges and outline the District's cooperation with local and federal enforcement agencies.
- **January 2004:** Tritt Schell and Kriete again contact USAC and remind them of the District's willingness to cooperate with USAC's investigation.
- **March 23, 2004:** The District provides USAC with a list of the steps it had taken to ensure that any pending and future requests for payments will be proper.
- **May 2004:** USAC conducts its first site visit to the District to review EMO-related records.
- **February 2005:** USAC conducts a Site Inventory Audit, with which the District fully cooperates.
- **March 1, 2005:** Weaver is sentenced to three years in prison and ordered to pay USAC, jointly and severally with Morrett, more than \$2 million in restitution.
- **March 2, 2005:** The District receives Detail Exception Worksheet #1, stating that the District received 787 laptop servers (valued at \$1,250,373.91) that were not eligible for E-rate funding.
- **March 10, 2005:** USAC internal memo recommends recovery of \$5.05 million from EMO.
- **March 30, 2005:** The District responds to Worksheet #1, arguing that the amount of restitution ordered against the three fraud conspirators should be credited toward any repayment obligation that the District might incur.
- **March 30, 2005:** USAC purportedly sends Petition for Remission or Mitigation of Forfeiture to US Attorney re: Weaver, but not Morrett.
- **May 16, 2005:** Morrett is sentenced to three years in prison and ordered to pay USAC, jointly and severally with Weaver, more than \$2 million in restitution.
- **September 20, 2007:** The District receives a Notification of Improperly Disbursed Funds, stating that USAC seeks to recover \$2,885,474.96 jointly and severally from the District and EMO for undelivered equipment and services.
- **November 19, 2007:** The District files its appeal with USAC.

Exhibit 3

Harrisburg City School District

To: Rick
From: John Weaver
Date: 4/09/02
RE: Harrisburg City School District, Application #319795

In response to questions on FRN:

849090: This FRN represents a request for terminal servers for all the classrooms throughout the district. After further assessment of need, I would like to reduce this FRN from a total requested amount of \$8,802,776.00 to \$6,989,500.00. The number of servers applied for will be reduced from 1102 to 875.

Thank you,



John Weaver
Director of Technology

Exhibit 4

Harrisburg City School District

To: Rick
From: John Weaver
Date: 4/09/02
RE: Harrisburg City School District, Terminal Servers

In response to questions on FRN: 639696

639696 the terminal server will allow the computers in every classroom to connect to the Internet under control of the teacher. This will permit the teacher to control Internet content as it pertains to the teacher's lesson plan. It will also allow the teacher to control and monitor exactly where on the Internet the students are. They will also be able to control and monitor the printing of materials from the Internet per student workstations.

Thank you,



John Weaver
Director of Technology

Exhibit 5

**Schools and Libraries Universal Service Program
Services Ordered and Certification Form 471
Application Display**

Block 1: Billed Entity Information

Applicant's Form Identifier: Harrisburgs-Servers

471 Application Number: 256221

Cert. Postmark Date: 01/18/2001

Out of Window Letter Date: Not applicable

Funding Year: 07/01/2001 - 06/30/2002

Form Status: CERTIFIED - In Window

Billed Entity Number: 125727

RAL Date: 03/21/2002

Name: HARRISBURG CITY SCHOOL DIST
Address: 1201 N 6TH ST
City: HARRISBURG **State:** PA **Zip:** 17102

Contact Name: John Weaver
Address: 1201 N 6TH ST
City: HARRISBURG **State:** PA **Zip:** 17102

Type of Application: SCHOOL DISTRICT

Ineligible Orgs: N

Block 3: Impact of Services Ordered in THIS Application

Number of students to be served: 7642

Number of library patrons to be served:

SERVICE DESCRIPTION	BEFORE ORDER	AFTER ORDER
a. (Schools/districts/consortia only) Telephone service: How many classrooms had phone service before and after your order?	750	850
b. High-bandwidth voice/data/video service: How many buildings served before and after your order?	17	17
c. High-bandwidth voice/data/video service: Highest speed to a building before and after your order?	oc-12	oc-48
d. Dial-up Internet connections: How many before and after your order?	0	0
e. Dial-up Internet connections: Highest speed before and after your order?	t-1	t-1
f. Direct connections to the Internet: How many before and after your order?	1	1
g. Direct connections to the Internet: Highest speed before and after your order?	t-1	t-1
h. Internet access(for schools): How many rooms have Internet access before and after your order?	1102	1102
j. Internet Access: How many computers (or other devices) with Internet access before and after your order?	3500	4602

Block 4: Worksheets

Worksheet A No: 283225

Student Count: 6598

Weighted Product (Sum. Column 8): 5820.4

Shared Discount: 88%

1. School Name: BATON-FELTON ACADEMY

2. Entity Number: 18262 3. Rural/Urban: Urban

4. Student Count: 56 5. NSLP Students: 41 6. NSLP Students/Students: 73.214%

7. Discount: 80% 8. Weighted Product: 44.8

1. School Name: BEN FRANKLIN ACAD PREP SCHOOL

2. Entity Number: 18264 3. Rural/Urban: Urban

4. Student Count: 0 5. NSLP Students: 0 6. NSLP Students/Students:

7. Discount: 89% 8. Weighted Product: 0

1. School Name: CAMP CURTIN ELEMENTARY SCHOOL

2. Entity Number: 18290 3. Rural/Urban: Urban

4. Student Count: 652 5. NSLP Students: 507 6. NSLP Students/Students: 77.760%

7. Discount: 90% 8. Weighted Product: 586.8

1. School Name: DOWNEY ELEMENTARY SCHOOL

2. Entity Number: 18265 3. Rural/Urban: Urban

4. Student Count: 252 5. NSLP Students: 209 6. NSLP Students/Students: 82.936%

7. Discount: 90% 8. Weighted Product: 226.8

1. School Name: FOOSE ELEMENTARY SCHOOL

2. Entity Number: 18277 3. Rural/Urban: Urban

4. Student Count: 400 5. NSLP Students: 329 6. NSLP Students/Students: 82.250%

7. Discount: 90% 8. Weighted Product: 360

1. School Name: HAMILTON ELEMENTARY SCHOOL

2. Entity Number: 18263 3. Rural/Urban: Urban

4. Student Count: 365 5. NSLP Students: 244 6. NSLP Students/Students: 66.849%

7. Discount: 80% 8. Weighted Product: 292

1. School Name: HARRISBURG HIGH SCHOOL

2. Entity Number: 18270 3. Rural/Urban: Urban

4. Student Count: 652 5. NSLP Students: 507 6. NSLP Students/Students: 77.760%

7. Discount: 90% 8. Weighted Product: 586.8

1. School Name: LINCOLN ELEMENTARY SCHOOL

2. Entity Number: 18266 3. Rural/Urban: Urban

4. Student Count: 494 5. NSLP Students: 389 6. NSLP Students/Students: 78.744%

7. Discount: 90% 8. Weighted Product: 444.6

1. School Name: MARSHALL ELEMENTARY SCHOOL

2. Entity Number: 18273 3. Rural/Urban: Urban

4. Student Count: 477 5. NSLP Students: 351 6. NSLP Students/Students: 73.584%

7. Discount: 80% 8. Weighted Product: 381.6

1. School Name: MELROSE ELEMENTARY SCHOOL

2. Entity Number: 18276 3. Rural/Urban: Urban

4. Student Count: 454 5. NSLP Students: 359 6. NSLP Students/Students: 79.074%

7. Discount: 90% 8. Weighted Product: 408.6

1. School Name: RIVERSIDE MATH AND SCIENCE ACADEMY

2. Entity Number: 18292 3. Rural/Urban: Urban

4. Student Count: 92 5. NSLP Students: 78 6. NSLP Students/Students: 84.782%

7. Discount: 90% 8. Weighted Product: 82.8

1. School Name: ROWLAND INTERMEDIATE SCHOOL

2. Entity Number:

208362 3. Rural/Urban: Urban
 4. Student Count: 601 5. NSLP Students: 466 6. NSLP Students/Students: 77.537%
 7. Discount: 90% 8. Weighted Product: 540.9

1. School Name: SCOTT ELEMENTARY SCHOOL
 2. Entity Number: 208361 3. Rural/Urban: Urban
 4. Student Count: 469 5. NSLP Students: 408 6. NSLP Students/Students: 86.993%
 7. Discount: 90% 8. Weighted Product: 422.1

1. School Name: SHIMMELL ELEMENTARY SCHOOL
 2. Entity Number: 18275 3. Rural/Urban: Urban
 4. Student Count: 349 5. NSLP Students: 291 6. NSLP Students/Students: 83.381%
 7. Discount: 90% 8. Weighted Product: 314.1

1. School Name: STEELE ELEMENTARY SCHOOL
 2. Entity Number: 18293 3. Rural/Urban: Urban
 4. Student Count: 373 5. NSLP Students: 295 6. NSLP Students/Students: 79.088%
 7. Discount: 90% 8. Weighted Product: 335.7

1. School Name: WILLIAM PENN INTERMEDIATE SCHOOL
 2. Entity Number: 225226 3. Rural/Urban: Urban
 4. Student Count: 632 5. NSLP Students: 506 6. NSLP Students/Students: 80.063%
 7. Discount: 90% 8. Weighted Product: 568.8

1. School Name: WOODWARD ELEMENTARY SCHOOL
 2. Entity Number: 18267 3. Rural/Urban: Urban
 4. Student Count: 280 5. NSLP Students: 204 6. NSLP Students/Students: 72.857%
 7. Discount: 80% 8. Weighted Product: 224

Block 5: Discount Funding Request(s)

FRN: 639696 FCDL Date: 04/19/2002	
11. Category of Service: Internal Connections	12. 470 Application Number: 213710000320520
13. SPIN: 143023021	14. Service Provider Name: EMO Communications, Inc.
15. Contract Number: HSD-ER-19	16. Billing Account Number:
17. Allowable Contract Date: 01/01/2001	18. Contract Award Date: 01/08/2001
19a. Service Start Date: 07/01/2001	19b. Service End Date:
20. Contract Expiration Date: 06/30/2002	
21. Attachment #: 1	22. Block 4 Worksheet No.: 283225
23a. Monthly Charges: \$.00	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$0.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$0.00	
23f. Annual non-recurring (one-time) charges: 6989500	23g. Ineligible non-recurring amt.: 0
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$6,989,500.00	
23i. Total program year pre-discount amount (23e + 23h): \$6,989,500.00	
23j. % discount (from Block 4): 88	
23k. Funding Commitment Request (23i x 23j): \$6,150,760.00	

Block 6: Certifications and Signature

24a. Schools: Y

24b. Libraries or Library Consortia: N

26a. Individual Technology Plan: N

26b. Higher-Level Technology Plan(s): Y

26c. No Technology Plan Needed:

27a. Approved Technology Plan(s): Y

27b. State Approved Technology Plan: N

27c. No Technology Plan Needed:

[<< Previous](#)

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Exhibit 6



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

February 8, 2002

John Weaver
Harrisburg City School District
1201 North 6th Street
Harrisburg, PA 17102

Re: Billed Entity Number: 125727
471 Application Number: 256221
Funding Request Number(s): 639696
Your Correspondence Dated: May 22, 2001

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Four Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 639696

Decision on Appeal: **Approved for Program Integrity Assurance (PIA) Review**
Explanation:

- Your appeal has brought forth persuasive information that the above funding requests should be approved for Program Integrity Assurance (PIA) Review.

The SLD will now review your funding request(s) for eligibility and compliance with program rules. Once a final determination has been made the SLD will issue a new Funding Commitment Decision Letter to you and to each service provider affected by this decision. SLD will issue the Funding Commitment Decision Letter to you as soon as possible.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Exhibit 7



Universal Service Administrative Company
Schools & Libraries Division

FUNDING COMMITMENT DECISION LETTER

(Funding Year 4: 07/01/2001 - 06/30/2002)

April 19, 2002

HARRISBURG CITY SCHOOL DIST
John Weaver
1201 N 6TH ST
HARRISBURG, PA 17102

Re: Form 471 Application Number: 256221
Funding Year 4: 07/01/2001 - 06/30/2002
Billed Entity Number: 125727

Thank you for your 2001-2002 E-rate application and for any assistance you provided throughout our review. We have completed review of your Form 471. This letter is to advise you of our decision(s).

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. We have reviewed each Discount Funding Request on your Form 471 application and have assigned a Funding Request Number (FRN) to each Block 5. The enclosed report includes a list of the FRNs from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) upon the filing of your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step to facilitate receipt of discounts as featured in this letter will be to file an FCC Form 486 with the SLD. The Form 486 notifies the SLD to begin payment to your service provider and provides certified indication that your technology plan(s) has been approved. The Form 486 and instructions can be found on the SLD web site at <www.sl.universalservice.org> or you can call the SLD Client Service Bureau at 1-888-203-8100 and ask that the form be sent to you. The new Form 486, dated July 2001 in the lower right corner, MUST be used for Funding Year 4 and for any previous funding years. Subsequent submissions of earlier versions of the Form 486 will be returned to you and will not be able to be processed. As you complete Form 486, you should also contact your service provider to verify they have received notice from the SLD of your funding commitments. After the SLD processes your Form 486, we can begin processing invoices from your service provider(s) so they can be reimbursed for discounted services they have provided you.

On December 21, 2000, the Children's Internet Protection Act was signed into law. That law will require schools and libraries that receive Universal Service discounts for certain services to adopt an Internet safety policy incorporating the use of filtering or blocking technology on computers with Internet access as a condition of receiving those discounts. THE LAW DOES NOT, HOWEVER, REQUIRE THIS TO BE IN PLACE FOR FUNDING YEAR 4. RECIPIENTS WILL HAVE TO CERTIFY, HOWEVER, THAT THEY ARE UNDERTAKING SUCH ACTIONS, INCLUDING NECESSARY PROCUREMENT PROCEDURES, TO PUT SUCH TECHNOLOGY PROTECTION MEASURES IN PLACE. For Funding Year 4 (the Funding Year beginning July 1, 2001), Billed Entities filing Form(s) 486 may encounter one or more situations that will affect their filing deadline(s). See the requirements for Funding Year 4 below and the Form 486

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey, 07981

Visit us online at: <http://www.sl.universalservice.org>

Instructions for more information on filing deadlines to ensure that your discounts can be paid retroactively to the Service Start Date. You are advised to keep proof of the date of mailing.

1. If Funding Year 4 services start on or before Sunday, October 28, 2001, and the date of your Funding Commitment Decision Letter is before Sunday, October 28, 2001, your Form 486 must be postmarked on or before October 28, 2001 in order for discounts to be paid retroactively to the Service Start Date. Failure to meet this certification deadline will result in reduced funding.
2. If your services start after October 28, 2001, your Form 486 must be postmarked no later than 120 days after the Service Start Date or 120 days after the date of the Funding Commitment Decision Letter, whichever is later, in order for discounts to be paid retroactively to the Service Start Date. Failure to meet this filing deadline will result in reduced funding.

You may also check the SLD web site at <www.sl.universalservice.org> or call the Client Service Bureau at 1-888-203-8100 for more information about how this new law might impact universal service discounts and any needed documentation for Funding Year 4 (July 1, 2001-June 30, 2002).

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) (FCD) indicated in this letter, your appeal must be made in writing and RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) at the SLD address below WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which FCD Letter you are appealing. Indicate the relevant funding year and the date of the Funding Commitment Decision Letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your FCD Letter.
3. Identify the particular Funding Request Number (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Funding Commitment Decision Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

Please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. New options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site <www.sl.universalservice.org>.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC): FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Services, check the SLD web site for more information. You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be made in writing and RECEIVED BY THE FCC at the FCC address above WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference area of the SLD web site <www.sl.universalservice.org>.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Federal Communications Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not

limited to that by SLD, the Applicant, or Service Provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries through advanced telecommunications services.

Sincerely,

Schools and Libraries Division
Universal Service Administrative Company

Enclosures

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each E-rate funding request from your application. We are providing the following definitions.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each Block 5 of your Form 471 once an application has been processed. This number is used to report to Applicants and Service Providers the status of individual discount funding requests submitted on a Form 471.

FUNDING STATUS: Each FRN will have one of three definitions: "Funded," "Not Funded," or "As Yet Unfunded."

1. An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. The funding level will generally be the level requested unless the SLD determines during the application review process that some adjustment is appropriate.
2. An FRN that is "Not Funded" is one for which no funds will be committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision," and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules, or because the total amount of funds in the Universal Service Fund was insufficient to fund all requests.
3. An FRN that is "As Yet Unfunded" reflects a temporary status that is assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for requests for internal connections at a particular discount level. For example, if your application included requests for discounts on both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications funding requests and a message that your internal connections requests are "As Yet Unfunded." You would receive a subsequent letter(s) regarding the funding decision on your internal connections requests.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on Form 471.

EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT: The first possible date of service for which the SLD will reimburse service providers for the discounts for the service.

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a will be listed. This will appear only for "site specific" FRNs.

PRE-DISCOUNT AMOUNT: Amount in Form 471, Block 5, Item 23, Column I, as determined through the application review process.

DISCOUNT PERCENTAGE APPROVED BY THE SLD: This is the discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse service providers for the approved discounts for this service through June 30, 2002. It is important that you and the service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually rendered.

FUNDING COMMITMENT DECISION EXPLANATION: This entry may amplify the comments in the "Funding Commitment Decision" area.

FUNDING COMMITMENT REPORT

Form 471 Application Number: 256221
Funding Request Number: 639696 Funding Status: Funded
Services Ordered: Internal Connections
SPIN: 143023021 Service Provider Name: EMO Communications, Inc.
Contract Number: HSD-ER-19
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Pre-Discount Amount: \$6,989,500.00
Discount Percentage Approved by the SLD: 88%
Funding Commitment Decision: \$6,150,760.00 - FRN approved; modified by SLD
Funding Commitment Decision Explanation: The one-time charge was changed to reflect the documentation provided by the applicant.

Exhibit 8

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : CRIMINAL NO.
:
v. : (Judge _____)
:
RONALD R. MORRETT, JR. and :
JOHN HENRY WEAVER : (Filed Electronically)

INFORMATION

INTRODUCTION

THE UNITED STATES OF AMERICA ALLEGES THAT:

At all times material and pertinent to this Information:

1. The defendant, **RONALD R. MORRETT, JR.**, was the President of EMO Communications, Inc.
2. The defendant, **JOHN HENRY WEAVER**, was employed as the Information Technology Director at the Harrisburg School District.
3. EMO Communications, Inc., was a business which, among other services, provided computer, cabling, and information technology services to educational institutions including public school districts.
4. The Harrisburg School District is a public school district serving the educational needs of children in the City of Harrisburg.

5. In 2000 the Harrisburg School District awarded a multi-million dollar contract to **MORRETT** and EMO Communications, Inc., for the development and installation of an educational information technology system for the school district.

6. More than 80% of the cost of this multi-million dollar contract was directly funded by the United States government through a federal grant made to the Harrisburg School District.

7. As part of this multi-million dollar federally-funded grant and contract, **MORRETT** and EMO Communications, Inc., would receive payments, or "draws", upon these federal funds only after **WEAVER**, as Information Technology Director for the Harrisburg School District certified that **MORRETT** and EMO Communications, Inc., had performed work specified under the contract.

8. In the course of performing work on this multi-million dollar contract which was funded by federal grant moneys, **MORRETT** agreed to make kickback payments to **WEAVER** while **WEAVER** was processing certifications which were essential to **MORRETT** obtaining payments on the contract.

9. In order to secretly make these payments, and conceal these payments, **MORRETT**, **WEAVER** and other individuals known to the United States agreed that some of the kickback payments would be funneled to

WEAVER through various bank accounts belonging to third parties, and would be directed to various accounts controlled by **WEAVER** under different names at different financial institutions.

10. Beginning on or about April 2002, and continuing up through on or about May 2003, **MORRETT** made kickback payments exceeding \$1,900,000 to **WEAVER**.

COUNT I

THE UNITED STATES OF AMERICA CHARGES THAT:

11. The United States of America, incorporates by reference, as though fully set forth herein, the Introduction to this Information.

12. Beginning on or about 2002, and continuing up through on or about April, 2003, in Dauphin County, within the Middle District of Pennsylvania, and elsewhere, the defendants –

**RONALD R. MORRETT, JR.
and
JOHN HENRY WEAVER**

did knowingly combine, conspire, confederate and agree together with persons known to the United States to violate the laws of the United States; namely:

To corruptly give, offer and agree to give things of value to another person with the intent to influence an agent of the Harrisburg School District, an agency of local government which received federal benefits exceeding \$10,000 in a one year period, in connection with business transactions involving more than \$5,000, in violation of Title 18, United States Code, Section 666.

13. In furtherance of this conspiracy and to attain the objects of the conspiracy the conspirators committed the following overt acts among others:

- A. On or about April 1, 2002 MORRETT caused a \$140,000.00 payment to be made to WEAVER.
- B. On or about May 16, 2002, MORRETT caused a \$37,000.00 payment to be made to WEAVER.
- C. On or about June 21, 2002, MORRETT caused a \$101,450.00 payment to be made to WEAVER.
- D. On or about July 19, 2002, MORRETT caused a \$17,000.00 payment to be made to WEAVER.
- E. On or about August 30, 2002, MORRETT caused a \$5,500 payment to be made to WEAVER.
- F. On or about September 26, 2002, MORRETT caused a \$20,000.00 payment to be made to WEAVER.
- G. On or about October 11, 2002, MORRETT caused a \$350,000.00 payment to be made to WEAVER.
- H. On or about November 6, 2002, MORRETT caused a \$35,000.00 payment to be made to WEAVER.
- I. On or about November 21, 2002, MORRETT caused a \$100,000.00 payment to be made to WEAVER.

DEC-08 03 17:27 FROM:HBG POLY TECH CORP 717-233-0268
12-8-03 4:38PM:HBGSD SUPERINTENDENT

TO:717 730 7133
7177091115

PAGE:10
* 11/13

J. On or about December 6, 2002, MORRETT caused a \$666,666.00 payment to be made to **WEAVER**.

K. On or about April 10, 2003, MORRETT caused a \$160,000.00 payment to be made to **WEAVER**.

L. On or about May 23, 2003, MORRETT caused a \$333,400.00 payment to be made to **WEAVER**.

All in violation of Title 18, United States Code, Section 371.

COUNT II

THE UNITED STATES OF AMERICA FURTHER CHARGES THAT:

Upon conviction of the offense alleged in Count I of this Information, defendants,

JOHN HENRY WEAVER

Shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the violation in Count I, including but not limited to approximately \$1,966,000.00.

If the above-described forfeitable property, as a result of any act or omission of the defendant: (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be divided without difficulty, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) as incorporated by Title 18, United States Code, Section 982(b), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above, including but not limited to the following:

- A. 2003 Chevrolet Trailblazer, VIN #1GNDT13S632186199;
- B. 2003 Chevrolet Trailblazer, VIN # 1GNET165536146270;
- C. 2003 Grady White Boat Serial No. NTLBN434A303;
- D. Real property located at 124 Skipjack Lane, White Horse Pike,
Berlin, Maryland;
- E. Real property located at 1978 Church Road, York, Pennsylvania;
- F. Real property located at 46 North Clinton Street, York, Pennsylvania;
- G. Real property located at 1910 Orange Street, York, Pennsylvania;
- H. Real property located at 144 Weldon Street, York, Pennsylvania;
- I. Real property located at 146 Weldon Street, York, Pennsylvania;
- J. An interest in a business known as the Red Eyed Frog Café, 806
South Atlantic Avenue, Ocean City, Maryland;
- K. Real property located at 505 Penguin Drive, Ocean City, Maryland;
- L. 2002 Chevrolet Station Wagon , VIN # 1GNDX13E52D151834.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and
Title 28, United States Code, Section 2461(c).

J. A. Marino
THOMAS A. MARINO
UNITED STATES ATTORNEY

Exhibit 9

ATTACHMENT
13

Universal Service for Schools and Libraries

Estimated Average Burden Hours Per Response: 1.5 hours

Please read instructions before completing.

This form can be filed online or by mail.

(To be completed by Service Providers)

SERVICE PROVIDER Invoice Form

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

NOTICE TO INDIVIDUALS: Section 69.619 of the Federal Communications Commission's rules requires the fund administrator to review bills for services and to determine the amount of universal service support to be disbursed to service providers. All service providers that have signed a contract or have tariffs in effect under which they provide discounted service to eligible schools and libraries who have received a Funding Commitment Decisions Letter from the fund administrator are required to submit this Service Provider Invoice Form to obtain universal service support for the amount of the discounts provided to eligible schools and libraries. This Service Provider Invoice Form informs the fund administrator of the amount of the discounts provided to eligible schools and libraries and for which the service provider seeks universal service support. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party in a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the federal government, the taxpayer identification number and other information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on the form, your application may be returned without action or your application may be delayed.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. No. 93-579, December 31, 1974, 5 U.S.C. § 552, and the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, D.C. 20554.

1. Service Provider Name (30 characters maximum)	EMO Communications, Inc.		
2. Service Provider Identification Number (SPIN) (9 characters maximum)	143023021		
3. Contact Name (30 characters maximum)	Ron Morrett		
4. Contact Telephone Number (14 digits maximum)	Area Code: 717	Phone Number: 737-0533	Ext.:
Contact Fax Number (10 digits maximum)	Area Code: 717	Fax Number: 303-1744	
Contact Email Address (100 characters maximum)	rmorrett@emocomm.com		
5. Invoice Number (25 characters maximum)	474HarrisServer2		
6. Invoice Date to SLD (mmddyyyy)	10/30/2002		
7. Total Invoice Amount (sum on Column (14) - 14.2 digits maximum)	\$4,077,075.20		

SERVICE PROVIDER Invoice Form

	(8)	(9)	(10)	(11)	(12)	(13)	(14)
	FCC Form 471 Application Number (up to 10 digits) (from Funding Commitment Decisions Letter)	Funding Request Number (FRN) (up to 10 digits) (from Funding Commitment Decisions Letter)	Bill Frequency (e.g., Monthly, Quarterly, Annually, One- time, Other)	Customer Billed Date (mmyyyy)	Shipping Date to Customer or Last Day of Work Performed (mmddyyyy)	Total (Undiscounted) Amount for Service per FRN (14.2 digits max.)	Discount Amount Billed to SLD (14.2 digits max.)
				For each FRN, there should be an entry in Column (11) or Column (12) but NOT BOTH			
1	256221	639696	ON DELIVERY		09/15/2002	\$2316520.00	\$2038537.60
2	256221	639696	ON DELIVERY		10/15/2002	\$2316520.00	\$2038537.60
3							
4							
5							
6							
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8							
9							
10							
11							
12							
13							
14							
15							

ATTACHMENT
15

Application ID: 357843

Universal Service for Schools and Libraries

Estimated Average Burden Hours Per Response: 1.5 hours

(To be completed by Service Providers)

Please read instructions before completing.

This form can be filed online or by mail.

SERVICE PROVIDER Invoice Form

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

NOTICE TO INDIVIDUALS: Section 69.619 of the Federal Communications Commission's rules requires the fund administrator to review bills for services and to determine the amount of universal service support to be disbursed to service providers. All service providers that have signed a contract or have tariffs in effect under which they provide discounted service to eligible schools and libraries who have received a Funding Commitment Decisions Letter from the fund administrator are required to submit this Service Provider Invoice Form to obtain universal service support for the amount of the discounts provided to eligible schools and libraries. This Service Provider Invoice Form informs the fund administrator of the amount of the discounts provided to eligible schools and libraries and for which the service provider seeks universal service support. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party in a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the federal government, the taxpayer identification number and other information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on the form, your application may be returned without action or your application may be delayed.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. No. 93-579, December 31, 1974, 5 U.S.C. § 552, and the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, D.C. 20554.

1. Service Provider Name (30 characters maximum)	EMO Communications, Inc.		
2. Service Provider Identification Number (SPIN) (9 characters maximum)	143023021		
3. Contact Name (30 characters maximum)	Ron Morrett		
4. Contact Telephone Number (14 digits maximum)	Area Code: 717	Phone Number: 737-0533	Ext.:
Contact Fax Number (10 digits maximum)	Area Code: 717	Fax Number: 303-1744	
Contact Email Address (100 characters maximum)	rmorrett@emocomm.com		
5. Invoice Number (25 characters maximum)	474HarrisServer3		
6. Invoice Date to SLD (mmddyyyy)	01232003		
7. Total Invoice Amount (sum on Column (14) - 14 digits maximum)	\$2,072,684.00		

SERVICE PROVIDER Invoice Form

	(8) FCC Form 471 Application Number (up to 10 digits) (from Funding Commitment Decisions Letter)	(9) Funding Request Number (FRN) (up to 10 digits) (from Funding Commitment Decisions Letter)	(10) Bill Frequency (e.g., Monthly, Quarterly, Annually, One- time, Other)	(11) Customer Billed Date (mmyyyy)	(12) Shipping Date to Customer or Last Day of Work Performed (mmddyyyy)	(13) Total (Undiscounted) Amount for Service per FRN (14.2 digits max.)	(14) Discount Amount Billed to SLD (14.2 digits max.)
				For each FRN, there should be an entry in Column (11) or Column (12) but NOT BOTH			
1	256221	639696	ON DELIVERY		01152002	\$2356460.00	\$2073684.80
2							
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Exhibit 10

**ATTACHMENT
12**

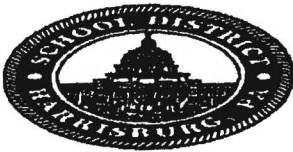
Confirmation Report - Memory Send

Date & Time: Nov-05-2002 03:56am
Tel line : 7177034140
Machine ID : HBGSD IT

Job number : 183
Date & Time : Nov-05 03:53am
To : 919735998539
Number of pages : 002
Start time : Nov-05 03:53am
End time : Nov-05 03:56am
Pages sent : 002
Status : OK

Job number : 183

*** SEND SUCCESSFUL ***



HARRISBURG SCHOOL DISTRICT

1201 North Sixth Street • Harrisburg, PA 17102-1406
(717) 703-4017 • FAX (717) 703-4140

I.T. DEPARTMENT

Fax

To: E-Rate (Jennifer Baumann) Fax# 913-599-6539
From: John Weaver I.T. Dept. Phone # 717-703-4124
Date: 11/4/02 CC: _____
Page: 1 of 2

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

Comments (if any)



HARRISBURG SCHOOL DISTRICT

1201 North Sixth Street • Harrisburg, PA 17102-1406

(717) 703-4017 • FAX (717) 703-4140

I.T. DEPARTMENT

Fax

To: E-Rate (Jennifer Braumann) Fax# 913-599-6539
From: John Weaver I.T. Dept. Phone # 717-703-4124
Date: 11/4/02 CC: _____
Re: _____ Page: 1 of 2

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

Comments (if any)

Service Certification

Service Provider Name	EMO COMMUNICATIONS, INC
Service Provider SPIN	143023021
Service Provider Invoice #	474HarrisServer2
Undiscounted Invoice Amount	2 @ 2,316,520.00
Discounted Invoice Amount	2 @ 2,038,537.60

Applicant Name	HARRISBURG CITY SD
Billed Entity Number (BEN)	125727
471#	256221
FRN#	639696
Representative / Contact Name	JOHN WEAVER
Representative / Contact Title	I.T. DIRECTOR
Representative / Contact Phone	717-703-4078
*Date Services Delivered and Installed *For Internet Access, Service period needed	10/15/02 - 9/15/02

This is to certify that I am authorized to represent the above named applicant. This is also to certify the services described on the attached vendor invoice were delivered and installed.

OR The charges represented by the above represented invoice are deposits or up-front charges for services, which have not been delivered, and have been agreed to based on the contract between the above referenced Applicant and Service Provider

Signed: John Weaver	Signed:
Date: 11/4/02	Date:
Copy of <u>detailed</u> vendor invoice must be attached	Copy of <u>supporting contract</u> must be attached if indicated below
	Supporting Contract Required YES <input type="checkbox"/> NO <input type="checkbox"/>

ATTACHMENT
16

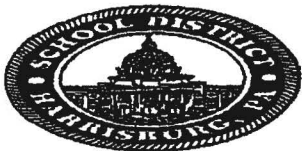
Confirmation Report - Memory Send

Date & Time: Feb-04-2003 10:40pm
Tel line : 7177034140
Machine ID : HBGSD IT

Job number : 407
Date & Time : Feb-04 10:37pm
To : 919735996539
Number of pages : 004
Start time : Feb-04 10:37pm
End time : Feb-04 10:40pm
Pages sent : 004
Status : OK

Job number : 407

*** SEND SUCCESSFUL ***



HARRISBURG SCHOOL DISTRICT

1201 North Sixth Street - Harrisburg, PA 17102-1406
(717) 703-4017 • FAX (717) 703-4140

I.T. DEPARTMENT

Fax

To: Suzana M. Lacombe Fax# 913-599-6539
From: John Weaver Phone # 703-4124 (717)
Date: 2/4/03 CC:
Page: 1 of 4

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

Comments (if any)

Thank you!!



HARRISBURG SCHOOL DISTRICT

1201 North Sixth Street • Harrisburg, PA 17102-1406

(717) 703-4017 • FAX (717) 703-4140

I.T. DEPARTMENT

Fax

To: Suzana M. Lacomica Fax# 973-599-6539
From: John Weaver Phone # 703-4124 (717)
Date: 2/4/03 CC: _____
Re: _____ Page: 1 of 4

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

Comments (if any)

Thank you!!

Service Certification

Service Provider Name	EMO Communications, Inc.
Service Provider SPIN	1430023021
Service Provider Invoice #	474HarrisServer3
Undiscounted Invoice Amount	\$2,356,460.00
Discounted Invoice Amount	\$2,073,684.80

Applicant Name	HARRISBURG SCHOOL DISTRICT
Representative / Contact Name	JOHN WEAVER
Representative / Contact Title	I.T. DIRECTOR
Representative / Contact Phone	717-703-4078
Billed Entity Number (BEN)	125727
471#	256221
FRN#	639696
Date Services Delivered and Installed	01/15/2003

This is to certify that I am authorized to represent the above named applicant. This is also to certify the services described on the attached vendor invoice were delivered and installed.

Or The charges represented by the above represented invoice are deposits or up-front charges for services, which have not been delivered, and have been agreed to based on the contract between the above referenced Applicant and Service Provider

Signed: <u>John Weaver</u>	Signed:
Date: <u>1/29/03</u>	Date:
Copy of <u>detailed</u> vendor invoice must be attached	Copy of <u>supporting contract</u> must be attached if indicated below
	Supporting Contract Required YES <input type="checkbox"/> NO <input type="checkbox"/>

Application ID: 357843

Universal Service for Schools and Libraries

Estimated Average Burden Hours Per Response: 1.5 hours

Please read instructions before completing.

This form can be filed online or by mail.

(To be completed by Service Providers)

SERVICE PROVIDER Invoice Form

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

NOTICE TO INDIVIDUALS: Section 89.619 of the Federal Communications Commission's rules requires the fund administrator to review bills for services and to determine the amount of universal service support to be disbursed to service providers. All service providers that have signed a contract or have tariffs in effect under which they provide discounted service to eligible schools and libraries who have received a Funding Commitment Decisions Letter from the fund administrator are required to submit this Service Provider Invoice Form to obtain universal service support for the amount of the discounts provided to eligible schools and libraries. This Service Provider Invoice Form informs the fund administrator of the amount of the discounts provided to eligible schools and libraries and for which the service provider seeks universal service support. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254.

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If you owe a past due debt to the federal government, the taxpayer identification number and other information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

If you do not provide the information requested on the form, your application may be returned without action or your application may be delayed.

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Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, D.C. 20554.

1. Service Provider Name (30 characters maximum)		EMO Communications, Inc.	
2. Service Provider Identification Number (SPIN) (9 characters maximum)		143023021	
3. Contact Name (30 characters maximum)		Ron Morrett	
4. Contact Telephone Number (14 digits maximum)	Area Code: 717	Phone Number: 737-0533	Ext.:
Contact Fax Number (10 digits maximum)	Area Code: 717	Fax Number: 303-1744	
Contact Email Address (100 characters maximum) rmorrett@emocomm.com			
5. Invoice Number (25 characters maximum)		474HarrisServer3	
6. Invoice Date to SLD (mmddyyyy)		01232003	
7. Total Invoice Amount (sum on Column (14) - 14 digits maximum)		\$2,072,884.00	

SERVICE PROVIDER Invoice Form

	(8) FCC Form 471 Application Number (up to 10 digits) (from Funding Commitment Decisions Letter)	(9) Funding Request Number (FRN) (up to 10 digits) (from Funding Commitment Decisions Letter)	(10) Bill Frequency (e.g., Monthly, Quarterly, Annually, One- time, Other)	(11) Customer Billed Date (mm/yyyy)	(12) Shipping Date to Customer or Last Day of Work Performed (mmddyyyy)	(13) Total (Undiscounted) Amount for Service per FRN (14.2 digits max.)	(14) Discount Amount Billed to SLD (14.2 digits max.)
				For each FRN, there should be an entry in Column (11) or Column (12) but NOT BOTH			
1	256221	639698	ON DELIVERY		01152002	\$2358460.00	\$2073684.80
2							
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14							
15							

Exhibit 11

ATTACHMENT 7

00014 2855

0143021024 0043 F01 BPO 1N0000 M01 IH0000 AL01
EMC Communications, Inc.
ATTN: Rob Pontett
323 South Front Street
Worleymaburg VA 17043

SPIN # 148823021 USAC REFERENCE # C090119118

STATEMENT DATE 11/22/2002

11/22/2002	148823021 0043	474Server12Server2	2038537.60
SEE Invoice Number: 338865 Line Item Detail Number:			
1045589, Amount Requested: 2038537.60;			
11/22/2002	148823021 0043	474Server12Server2	2038537.60
SEE Invoice Number: 338865 Line Item Detail Number:			
1045589, Amount Requested: 2038537.60;			
			4077075.20

129027-0001 (3) Springfield Drive
Fairfax, VA 22033
(703) 227-6100

~~0120869864~~
NOVEMBER 26, 2002

Pay To The Order Of **TELE COMMUNICATIONS, INC.**
ATTA RSN Noted

අග්‍රාමාත්‍යවරයාගේ

SOLD AFTER 120 DAYS

1977, 075.20**

Amount: FOUR MILLION SEVENTY SEVEN THOUSAND SEVENTY FIVE DOLLARS AND 20/100

LEASABLE BANK N.A.
CHICAGO, ILLINOIS 60603

Ch. W. H.

Authorized Signature

புலவர் நெடுமாலை அரிசன்

[illegible]

अ.स. ११-१२६

ATTACHMENT 10

Cycle 3574

0143023021 0001 P01 B00 IN0000 M01 IN0000 AL01
EMC Communications, Inc.
ATTN: Ron Mistratt
329 South Front Street
Wilmington DE 19801

SPIN # 143023021 USAC REFERENCE # C600132053

STATEMENT DATE 05/08/2003

05/08/2003 143023021 000000 474HarrisServer3 2073684.80
SLB Invoice Number: 357043; Line Item Detail Number:
1128848; Amount Requested: 2073684.80; Partial Paymt,
Inv > Remaining Commitment; 1201;

2073684.80



THIS CHECK IS PRINTED ON A SECURITY BACKGROUND

0130045688
MAY 13, 2003

10-2000-7700

Valid Until 12/31/2003

***** 52507061684 600 *****

Pay To The Order Of: **EMO COMMUNICATIONS, INC.**
Attn: Ron Morrell

Amount: TWO MILLION SEVENTY THREE THOUSAND SIX HUNDRED EIGHTY FOUR DOLLARS AND 80/100

LASALLE BANK N.A.
CHICAGO, ILLINOIS 60603

Authorized Signature

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ENDORSE HERE

X

DONOT WRITE STAMP OR ENDORSE HERE
RESERVED FOR BANK OF AMERICA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit 12

ATTACHMENT
18



HARRISBURG SCHOOL DISTRICT

1201 North Sixth Street • Harrisburg, PA 17102-1406
(717) 703-4022 • FAX (717) 703-4115

OFFICE OF THE SUPERINTENDENT

June 4, 2003

Mr. John Weaver
146 Weldon Drive
York, PA 17404

Dear Mr. Weaver:

You are hereby suspended, with pay, effective immediately. You are not to have any access physically or electronically to school district property. You are to turn over all keys, access codes, access cards, and passwords to Henry Sandifer (bearer of this letter) immediately.

Sincerely,

Julie Botel
Deputy Superintendent

cc: Dr. Gerald Kohn
William Gretton
Mark Holman

Harrisburg School District Administrative Passwords

Purpose

Password

These are the only administrative passwords I am aware of.


John Weaver

Date

ATTACHMENT
19

DATE: June 19, 2003

TO: William Gretton
Business Administrator
Harrisburg School District

FROM: John Weaver 
I.T. Director
Harrisburg School District

SUBJECT: Resignation/Retirement

Mr. Gretton

Due to poor health I find it in my best interest and the Districts, to resign/retire from my position as the I.T. Director for the Harrisburg School District, effective June 30, 2003. I will use sick days from my sick leave to cover the time from June 18, 2003 to June 30, 2003.

I want to thank the District for the opportunities it has given me over the past sixteen years.

RECEIVED
BUSINESS SERVICES
2003 JUN 23 PM 2:46

Exhibit 13



U.S. Department of Justice

Thomas A. Marino
*United States Attorney
Middle District of Pennsylvania*

*William J. Neenan Federal Building
Suite 311
235 N. Washington Avenue
P.O. Box 309
Scranton, PA 18501-0309
(570) 348-3800
FAX (570) 348-2816/348-2830*

*Harrisburg Federal Building and
Courthouse, Suite 220
228 Walnut Street
P.O. Box 11754
Harrisburg, PA 17108-1754
(717) 221-4482
FAX (717) 221-4582/221-2346*

*Herman T. Schneebell Federal Building
Suite 316
240 West Third Street
Williamsport, PA 17701-6465
(570) 326-1935
FAX (570) 326-7926*

December 8, 2003

PRESS RELEASE

Federal and local officials announced today the filing of criminal charges in an alleged \$1,900,000 kickback conspiracy case relating to federally funded information technology program contracts involving the Harrisburg School District.

THOMAS A. MARINO, United States Attorney for the Middle District of Pennsylvania, JEFFREY A. LAMPINSKI, Special Agent in Charge of the FBI's Philadelphia Division Office, along with MAYOR STEVE REED, City of Harrisburg, and CHARLES KELLAR, Chief, Harrisburg Police Department, announced today that two men have been charged in a two count Criminal Information with participating in this \$1,900,000 kickback conspiracy.

The defendants charged today were:

RONALD R. MORRETT, age 34
Harrisburg, PA.
President, EMO Communications, Inc.

and

JOHN HENRY WEAVER, age 55
York, PA.
*Former Director of Information Technology for the Harrisburg
School District*

The Criminal Information filed today in federal court charges **MORRETT** and **WEAVER** with conspiring to make more than \$1,900,000 in kickback payments to one another in connection with a federally-funded, \$6,900,000 information technology services contract involving the Harrisburg School District and **MORRETT's** firm, EMO Communications.

In announcing the filing of this charge **MR. MARINO** and **SPECIAL AGENT IN CHARGE LAMPINSKI** emphasized that the current administration at the Harrisburg School District and the City of Harrisburg initially discovered this matter, brought it to the attention of federal authorities, and cooperated extensively with all aspects of the government's investigation into this kickback conspiracy. Federal officials praised city and school officials for their initiative in referring this matter and their complete cooperation in all aspects of this investigation.

The Criminal Information filed in federal court alleges at the time of this conspiracy, **WEAVER**, as part of his duties at the Harrisburg School District, oversaw implementation of this federally funded contract with **MORRETT's** business. That contract was initially negotiated and implemented by the school district in 1999 and 2000, prior to the current

school administration assuming responsibility for Harrisburg's schools. According to the charges filed in federal court more than 80% of this multi-million dollar contract for the school district was directly funded by the United States government through a federal grant made to the school district.

The Criminal Information alleges that between April 2002 and May 2003 **MORRETT** and **WEAVER** agreed that kickbacks totaling more than \$1,900,000 would be paid to **WEAVER** by **MORRETT** relating to this contract. The Information charges that some 12 kickback payments were made during the 13 months of the conspiracy. According to the Criminal Information, **MORRETT** and **WEAVER** agreed that some of the payments would be funneled through various bank accounts belonging to third parties in order to conceal the payments.

The Criminal Information contains a second count which calls for **WEAVER** to forfeit the \$1,900,000 in bribe proceeds which he obtained in the course of the conspiracy. This criminal forfeiture count also includes some twelve specific assets which the government would seek to forfeit as substitute assets. These assets, whose forfeiture is sought in the criminal Information, include: three vehicles; a motorboat; seven parcels of real estate; and **WEAVER**'s interest in an Ocean City bar and café.

According to **MR. MARINO**, along with this Criminal Information, the United States has filed two plea agreements signed by **WEAVER** and **MORRETT**. In these agreements the defendants agree to enter guilty pleas to these charges, make restitution and truthfully

cooperate with the government's on-going investigation of this matter. In addition, **WEAVER** has agreed to consent to the criminal forfeiture described in the Information.

In announcing these charges, **MR. MARINO** stated: "The actions taken today represent the commitment of the Department of Justice, the Federal Bureau of Investigation and the Harrisburg Police Department to ensure the highest standards of integrity for those officials and businesses that assist and serve our children and schools. This action also reflects the commitment of the law enforcement community to investigate and pursue allegations of wrongdoing, wherever they may occur, whether it be on our city streets, government offices or business suites."

This investigation has been conducted by the Federal Bureau of Investigation and the Harrisburg Police Department. **MR. MARINO** praised the FBI and the Harrisburg Police Department for their thorough and tireless investigation of this matter.

The case will be handled by Assistant U.S. Attorneys Martin C. Carlson and James Clancy.

An Indictment or Information is not evidence of guilt but simply a description of the charge made by the Grand Jury and/or United States Attorney against a defendant. A charged Defendant is presumed innocent until a jury returns a unanimous finding that the United States has proven the defendant's guilt beyond a reasonable doubt or until the defendant has pled guilty to the charges.

Exhibit 14

FILED
HARRISBURG, PA
DEC 8 - 2003

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY E D'ANDREA, CLERK
Per
Deputy Clerk

UNITED STATES OF AMERICA

v.

RONALD MORRETT

1) CRIMINAL NO.

) (Judge

.) (Filed Electronically)

PLEA AGREEMENT

The following plea agreement is entered into by and between the United States Attorney for the Middle District of Pennsylvania and the above-captioned defendant. Any reference to the United States or to the Government in this Agreement shall mean the office of the United States Attorney for the Middle District of Pennsylvania.

The defendant, as well as counsel for both parties, understand that the United States Sentencing Commission Guidelines which took effect on November 1, 1987, as amended, will apply to the offenses to which the defendant is pleading guilty, since those offenses were completed after the effective date of the implementation of the Guidelines.

1. The defendant agrees to waive indictment by a grand jury and plead guilty to a felony information which will be filed against the defendant by the United States Attorney for the Middle District of Pennsylvania. That information will charge the defendant with a violation of Title 18, United States Code, Section 371, CONSPIRACY. The maximum penalty for that offense is imprisonment for a period of 5 years, a fine of \$250,000.00, a maximum term of supervised release of up to 3 years, to be determined by the court, which shall be served at the conclusion of and in addition to any term of imprisonment, the costs of prosecution, denial of

certain federal benefits as well as an assessment in the amount of \$100.00. At the time the guilty plea is entered, the defendant shall admit to the Court that the defendant is, in fact, guilty of the offense charged in the information. In the event that the defendant subsequently successfully vacates or sets aside any plea, conviction or sentence imposed pursuant to this plea agreement, the defendant further agrees to waive any defense to the filing of additional charges which could have been brought against the defendant at the time of this plea based upon laches, the assertion of any speedy trial rights, any applicable statute of limitations, or any other grounds.

2. The defendant also understands that the Court must impose a term of supervised release following any sentence of imprisonment exceeding one (1) year, or when required by statute. The Court may require a term of supervised release in any other case.

3. The defendant understands that the Court may impose a fine pursuant to the Sentencing Reform Act of 1984. The willful failure to pay any fine imposed by the Court, in full, may be considered a breach of this plea agreement. Further, the defendant acknowledges that willful failure to pay the fine may subject the defendant to additional criminal violations and civil penalties pursuant to Title 18, United States Code, Section 3611, et seq.

4. The defendant understands that under the alternative fine section of Title 18, United States Code, Section 3571, the maximum fine quoted above may be increased if the District Court finds that any person derived pecuniary gain or suffered pecuniary loss from the offense and that the maximum fine to be imposed, if the Court elects to proceed in this fashion, could be twice the amount of the gross gain or twice the amount of the gross loss resulting from the offense.

5. If the Court awards a fine or restitution as part of the defendant's sentence, and the

sentence includes a term of imprisonment, the defendant agrees to voluntarily enter the United States Bureau of Prisons-administered program known as the Inmate Financial Responsibility Program through which the Bureau of Prisons will collect up to 50% of the defendant's prison salary and apply those amounts on the defendant's behalf to the payment of the outstanding fine and restitution orders.

6. The defendant understands that the Court will impose a special assessment of \$100.00 pursuant to the provisions of Title 18, United States Code, Section 3013. No later than the date of sentencing, the defendant or defendant's counsel shall mail a check in payment of the special assessment directly to the Clerk, United States District Court Middle District of Pennsylvania. This check should be made payable to "Clerk, United States District Court". Counsel for the defendant shall provide a copy of the special assessment check to the United States Attorney's Office for the Middle District of Pennsylvania at the time of sentencing certifying compliance with this provision of the plea agreement. If the defendant intentionally fails to make this payment, or pays with an insufficient funds check, it is understood that this failure may be treated as a breach of this plea agreement and may result in further prosecution or the filing of additional criminal charges.

7. The defendant agrees, as a part of this agreement, to submit to interviews by the United States Attorney's Office's Financial Litigation Unit regarding the defendant's financial status. Pursuant to Title 18, United States Code, Section 3664 (d)(3) the defendant also agrees to complete the required financial affidavit, fully describing the defendant's financial resources within 10 days of the guilty plea. The defendant will submit the original affidavit, on forms prescribed by the probation office, to the U.S. Probation Office with a copy to the United States

Attorney's office.

8. The United States Attorney's Office for the Middle District of Pennsylvania agrees that it will not bring any other criminal charges against the defendant directly arising out of the defendant's involvement in the offense described above. However, nothing in this agreement will limit prosecution for criminal tax charges, if any, arising out of those offenses.

9. Counsel for the defendant has affirmatively indicated to the United States Attorney's Office that the defendant not only wishes to enter a plea of guilty, but will clearly demonstrate a recognition and affirmative acceptance of responsibility as required by the sentencing guidelines. Additionally, the defendant has assisted authorities in the investigation and prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate its resources efficiently. Accordingly, if the defendant can adequately demonstrate this acceptance of responsibility to the government, the United States hereby moves at sentencing that the defendant receive a three-level reduction in the defendant's offense level for acceptance of responsibility. The failure of the Court to find that the defendant is entitled to this three-level reduction shall not be a basis to void this plea agreement.

10. At the time of sentencing, the United States will make a specific recommendation within the applicable guideline range and reserves the right to recommend the maximum sentence within that range.

11. If probation or a term of supervised release is ordered, the United States may recommend that the court impose one or more special conditions, including but not limited to the following:

(a) The defendant be prohibited from possessing a firearm or other dangerous weapon.

(b) The defendant make restitution, if applicable payment of which shall be in accordance with a schedule to be determined by the court.

(c) The defendant pay any fine imposed in accordance with a schedule to be determined by the court.

(d) The defendant be prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation office unless the defendant is in compliance with the payment schedule.

(e) The defendant be directed to provide the probation office and the United States Attorney access to any requested financial information.

(f) The defendant be confined in a community treatment center, halfway house or similar facility.

(g) The defendant be placed under house detention.

(h) The defendant be ordered to perform community service.

(i) The defendant be restricted from working in certain types of occupation or with certain individuals, if the Government deems such restrictions to be appropriate.

(j) The defendant be directed to attend substance abuse counseling which may include testing to determine whether the defendant is using drugs or alcohol.

(k) The defendant be directed to attend psychiatric or psychological counseling and treatment in a program approved by the probation officer.

(l) The defendant be denied certain federal benefits including contracts, grants, loans, fellowships and licenses.

(m) The defendant be directed to pay any state or federal taxes and file any and all state and federal tax returns as required by law.

12. The defendant has agreed to cooperate with the United States. Upon completion of the cooperation, if the United States believes the defendant has provided "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e) or Section 5K1.1 of the United States Sentencing Guidelines, the United States may request the Court to depart below any applicable mandatory minimum range and/or the guideline range when fixing a sentence for this defendant. In the event that the defendant renders substantial assistance, the United States specifically reserves the right to make a specific recommendation of a term of months to the District Court. However, the defendant acknowledges that the United States may decline to exercise its discretion and recommend a departure if the defendant breaches any of the provisions of this Agreement, or commits any other offense while awaiting plea or sentencing.

19A. The defendant has agreed to cooperate with the United States. Upon completion of the cooperation, if the United States believes the defendant has provided "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e), the United States may request the Court to depart below any mandatory minimum sentence when fixing a sentence for this defendant. In the event that the defendant renders substantial assistance, the United States specifically reserves the right to make a specific recommendation of a term of months to the

District Court. However, the defendant acknowledges that the United States may decline to exercise its discretion and recommend a departure if the defendant breaches any of the provisions of this Agreement, or commits any other offense while awaiting plea or sentencing.

13. The defendant acknowledges that, pursuant to the Mandatory Restitution Act of April 24, 1996, Title 18, United States Code, Section 3663A, the Court is required in all instances to order full restitution to all victims for the losses those victims have suffered as a result of the defendant's conduct. With respect to the payment of this restitution, the defendant further agrees that, as part of the sentence in this matter, the defendant shall be responsible for making payment of this restitution in full, unless the defendant can demonstrate to the satisfaction of the court that the defendant's economic circumstances do not allow for the payment of full restitution in the foreseeable future, in which case the defendant will be required to make partial restitution payments.

14. The defendant also understands that the United States will provide to the United States Probation Office all information in its possession which the United States deems relevant regarding the defendant's background, character, cooperation, if any, and involvement in this or other offenses.

15. The defendant understands that pursuant to the United States District Court for the Middle District of Pennsylvania "Policy for Guideline Sentencing" both the United States and defendant must communicate to the probation officer within fourteen (14) days after disclosure of the pre-sentence report any objections they may have as to material information, sentencing classifications, sentencing guideline ranges and policy statements contained on or omitted from the report. The defendant agrees to meet with the United States at least five (5) days prior to

sentencing in a good faith attempt to resolve any substantive differences. If any issues remain unresolved, they shall be communicated to the probation officer for his inclusion on an addendum to the pre-sentence report. The defendant understands that unresolved substantive objections will be decided by the court at the sentencing hearing where the standard of proof will be a preponderance of the evidence. Objections by the defendant to the pre-sentence report or the Court's rulings, will not be grounds for withdrawal of a plea of guilty.

16. The defendant understands that pursuant to the Victim and Witness Protection Act and the regulations promulgated under the Act by the Attorney General of the United States:

(a) The victim of a crime is given the opportunity to comment on the offense and make recommendations regarding the sentence to be imposed. The defendant also understands that the victim's comments and recommendations may be different than those of the parties to this agreement.

(b) The federal prosecutor is required to consult with victims of serious crimes to obtain their views regarding the appropriate disposition of the case against the defendant and make the information regarding sentencing known to the Court. The defendant understands that the victim's opinions and recommendations may be different than those presented by the United States as a consequence of this agreement.

(c) The federal prosecutor is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly prolong or complicate the sentencing proceeding," and the Court is authorized to order restitution by the defendant including, but not limited to, restitution for property loss, personal injury or death.

17. At the sentencing, the United States will be permitted to bring to the Court's attention, and the Court will be permitted to consider, all relevant information with respect to the

defendant's background, character and conduct including the conduct that is the subject of the charges which the United States has agreed to dismiss, and the nature and extent of the defendant's cooperation, if any. The United States will be entitled to bring to the Court's attention and the Court will be entitled to consider any failure by the defendant to fulfill any obligation under this agreement.

18. The defendant understands that the Court is not a party to and is not bound by this agreement nor any recommendations made by the parties. Thus, the Court is free to impose upon the defendant any sentence up to and including the maximum sentence of imprisonment for 5 years, a fine of \$250,000, a maximum term of supervised release of up to 3 years, which shall be served at the conclusion of and in addition to any term of imprisonment, the costs of prosecution, denial of certain federal benefits and assessments totaling \$100.00.

19. If the Court imposes a sentence with which the defendant is dissatisfied, the defendant will not be permitted to withdraw any guilty plea for that reason alone, nor will the defendant be permitted to withdraw any pleas should the Court decline to follow any recommendations by any of the parties to this agreement.

20. The defendant agrees to cooperate fully with the United States. The defendant understands and agrees that complete and truthful cooperation is a material condition of this agreement. Cooperation shall include providing all information known to the defendant regarding any criminal activity, including but not limited to the offenses described in this agreement. Cooperation will also include complying with all reasonable instructions from the United States, submitting to interviews by investigators and attorneys at such reasonable times and places to be determined by counsel for the United States and to testify fully and truthfully

before any grand juries, hearings, trials or any other proceedings where the defendant's testimony is deemed by the United States to be relevant. The defendant understands that such cooperation shall be provided to any state, local and federal law enforcement agencies designated by counsel for the United States. The United States agrees that any statements made by the defendant during the cooperation phase of this agreement shall not be used against the defendant in any subsequent prosecutions unless and until there is a determination by the Court that the defendant has breached this agreement. However, the United States will be free to use at sentencing in this case any of the statements and evidence provided by the defendant during the cooperation phase of the agreement. Moreover, the parties agree that, although the defendant's statements made during the cooperation phase cannot be used against the defendant in any subsequent criminal prosecution, this provision shall not preclude the United States from requiring the defendant to submit to interviews by local, state or federal agencies which may use these statements in civil or administrative proceedings involving the defendant. The defendant waives and agrees to waive any rights under the Speedy Trial Act and understands and agrees that sentencing may be delayed until the cooperation phase has been completed so that at sentencing the Court will have the benefit of all relevant information.

21. The defendant agrees to act in an undercover capacity to the best of the defendant's ability and agrees to allow the authorities to monitor and tape record conversations, in accordance with Federal law, between the defendant and persons believed to be engaged in criminal conduct, and fully cooperate with the instructions of law enforcement authorities in such undercover activities.

22. The defendant, if requested by the attorney for the United States, agrees to submit to

polygraph examinations by a polygrapher selected by the United States.

23. In the event the United States believes the defendant has failed to fulfill any obligations under this agreement, then the United States shall, in its discretion, have the option of petitioning the Court to be relieved of its obligations. Whether or not the defendant has completely fulfilled all of the obligations under this agreement shall be determined by the Court in an appropriate proceeding at which any disclosures and documents provided by the defendant shall be admissible and at which the United States shall be required to establish any breach by a preponderance of the evidence. In order to establish any breach by the defendant, the United States is entitled to rely on statements and evidence given by the defendant during the cooperation phase of this agreement.

24. The parties agree that at any court hearings held to determine whether the defendant has breached this agreement, the polygraph results and the polygrapher's conclusions and opinions shall be admissible. The parties also agree that such polygraph data shall be admissible at any sentencing hearings involving the defendant.

25. The defendant and the United States agree that in the event the Court concludes that the defendant has breached the agreement:

(a) The defendant will not be permitted to withdraw any guilty plea tendered under this agreement and agrees not to petition for withdrawal of any guilty plea;

(b) The United States will be free to make any recommendations to the Court regarding sentencing in this case;

(c) Any evidence or statements made by the defendant during the cooperation phase

will be admissible at any trials or sentencings;

(d) The United States will be free to bring any other charges it has against the defendant, including any charges originally brought against the defendant or which may have been under investigation at the time of the plea. The defendant waives and hereby agrees not to raise any defense to the reinstatement of these charges based upon collateral estoppel, Double Jeopardy or other similar grounds.

26. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement, including perjury, false declaration, or false statement, in violation of Title 18, United States Code, Section 1621, 1623, or 1001, or obstruction of justice, in violation of Title 18, United States Code, Section 1503, 1505, or 1510, should the defendant commit any of those offenses during the cooperation phase of this agreement. Should the defendant be charged with any offense alleged to have occurred after the date of this agreement, the information and documents disclosed to the United States during the course of the cooperation could be used against the defendant in any such prosecution.

27. Nothing in this agreement shall restrict or limit the nature or content of the United States's motions or responses to any motions filed on behalf of the defendant. Nor does this agreement in any way restrict the government in responding to any request by the court for briefing, argument or presentation of evidence regarding the application of the Sentencing Guidelines to the defendant's conduct, including but not limited to, requests for information concerning possible sentencing departures.

28. Nothing in this agreement shall bind any other federal, state or local law enforcement agency.

29. The defendant understands that it is a condition of this plea agreement that the defendant refrain from any further violations of state, local or federal law while awaiting plea and sentencing under this agreement. The defendant acknowledges and agrees that if the government receives information that the defendant has committed new crimes while awaiting plea and /or sentencing in this case, the government may petition the Court and, if the Court finds by a preponderance of the evidence that the defendant has committed any other criminal offense while awaiting plea or sentencing, the Government shall be free at its sole election to either: A) withdraw from this agreement, or B) make any sentencing recommendations to the Court that it deems appropriate. The defendant further understands and agrees that, if the Court finds that the defendant has committed any other offense while awaiting plea or sentencing, the defendant will not be permitted to withdraw any guilty pleas tendered pursuant to this plea agreement, and the government will be permitted to bring any additional charges which it may have against the defendant.

30. The United States is entering into this Plea Agreement with the defendant because this disposition of the matter fairly and adequately addresses the gravity of the series of offenses from which the charges are drawn, as well as the defendant's role in such offenses, thereby serving the ends of justice.

31. This document states the complete and only Plea Agreement between the United States Attorney for the Middle District of Pennsylvania and the defendant in this case, and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that is signed by all parties or on the record in Court. No other promises or inducements have been or will be made to the defendant

in connection with this case, nor have any predictions or threats been made in connection with this plea. Pursuant to Rule 11 of the Federal Rules of Criminal Procedure the defendant certifies that the defendant's plea is knowing and voluntary, and is not the result of force or threats or promises apart from those promises set forth in this written plea agreement.

32. In the event that the defendant does not plead guilty, the plea is not accepted by the court, or the plea is withdrawn, the defendant agrees that he hereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence and that any statements made by him as part of plea discussions or as part of his cooperation with the government will be admissible against him without limitation in any civil or criminal proceeding.

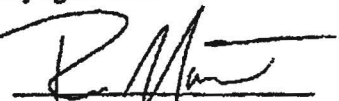
33. The original of this agreement must be signed by the defendant and defense counsel and received by the United States Attorney's Office on or before 5:00 p.m., August 4, 2003, otherwise the offer may, in the sole discretion of the Government, be deemed withdrawn.

34. None of the terms of this agreement shall be binding on the Office of the United States Attorney for the Middle District of Pennsylvania until signed by the defendant and defense counsel and until signed by the United States Attorney.

ACKNOWLEDGMENTS


I have read this agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

7-23-03
Date


Defendant

I am the defendant's counsel. I have carefully reviewed every part of this agreement with the defendant. To my knowledge my client's decision to enter into this agreement is an informed and voluntary one.

7-23-03
Date


Counsel for Defendant

9-5-03
Date


United States Attorney

Exhibit 15

Appendix 1 - Harrisburg City School District Response

Response of the Applicant, Harrisburg City School District, to Universal Service Administrative Company Detail Exception Worksheet # 1 Funding Year 2001

I. Introduction and Summary of Position

The Harrisburg City School District ("District" or "Harrisburg SD") appreciates the opportunity to submit this Response to the Detail Exception Worksheet # 1 ("Exception") for Funding Year 2001, for consideration by the Schools and Libraries Committee regarding this matter. The inventory audit giving rise to this Exception grew out of a criminal prosecution of the District's former technology director, John Weaver, and Ronald Morrett, the former President of EMO Communications, Inc., a former technology vendor for the District.

The District poses no opposition to the finding that the value of the laptop servers amounting to \$1,250,373.91 constitutes ineligible services associated with an FCC Form 471, number 256221, FRN 639696. The District, however, maintains that the value of this equipment has been recovered by the SLD through other related proceedings as a direct result of the District's cooperation with criminal authorities, and through payments ordered to be made by its former technology director. The District, therefore, urges the SLD to credit the District with these amounts recovered through other means, as explained more fully below. The SLD should refrain from ordering the District to incur any additional charges beyond the substantial costs already incurred in connection with the related criminal proceedings. In the following sections of this Response, the District will set forth a complete explanation and rationale for its position.

II. The District Discovered the Suspicious Circumstances And Referred These Concerns to Law Enforcement Authorities, Which Led to Criminal Convictions Concerning A Certain E-rate Procurement for Funding Year 2001.

The Harrisburg City School District was taken over by Harrisburg City Mayor, Steve Reed, in 2001, pursuant to state statute. A Board of Control was established to oversee the District and a new superintendent, Dr. Gerald W. Kohn, and new business administrator, William Gretton III, were hired to begin the process of rebuilding the District. E-rate was a task that had always rested with John Weaver, former technology director, and he was assisted by an E-rate consulting firm, E-rate Consulting, Inc. Initially, Dr. Kohn and Mr. Gretton had no reason to doubt Mr. Weaver's abilities or intentions, and the E-rate responsibility remained within Mr. Weaver's scope of responsibilities.

In April of 2002, the District received funding approval for FRN 639696 in the amount of \$6,150,000 for terminal servers, and associated services to be purchased from EMO

Appendix 1 - Harrisburg City School District Response

Communications, Inc.² District records show that the prediscount price of the FRN for the computers, installation, certain upgrades ("3/3/0 to 5/5/5"), and an extended five-year maintenance warranty, amounted to \$6,989,500. Of that amount, the cost of 827 terminal servers was itemized as \$1,390,187, or a unit cost of \$1,681.

As the Exception notes, the District's records show that the District received delivery of 787 laptops. No other services, such as installation or maintenance or upgrades, were ever received by the District. In June of 2003, the District detected that untoward conduct may have occurred with respect to this transaction, and referred their concerns immediately to appropriate officials and law enforcement officers.³ An extensive six-month law enforcement investigation followed. In December, 2003, the United States Attorney announced the criminal indictment of Mr. Morrett and Mr. Weaver for conspiring to make more than \$1.9 in kickback payments to one another in connection with this specific E-rate funding request.⁴ The criminal prosecution and conviction of Mr. Weaver and Mr. Morrett that the United States Attorney initiated was the direct result of the District's disclosure of potential criminal wrongdoing to appropriate law enforcement authorities as soon as the District's business manager and Superintendent learned of the problem. **There can be no doubt that the District's timely notification to law enforcement authorities enabled successful criminal prosecutions of Mr. Weaver and Mr. Morrett.**

III. The District Has Fully Cooperated With, And Has Been Fully Forthcoming With The Schools And Libraries Division Regarding The Wrongdoing Committed By Its Former Technology Director.

Immediately upon learning the potential wrong-doings, Dr. Kohn and Mr. Gretton transferred all E-rate responsibilities from the technology office into the business office; suspended and then terminated Mr. Weaver's employment; fired the former E-rate consultants and hired what they believe are two of the top E-rate consultants in the country both for their knowledge of the E-rate process but also their reputations for honesty and integrity. The instructions to the new District's consultants were simple: salvage the previous years' E-rate funding that is legitimate, ensure that this and future years' applications are above reproach, and restore our reputation with the SLD.

² The approved discount on the FRN was 88%.

³ The District's suspicions were aroused because the person in charge of conducting computer training was unable to ascertain the location and delivery status of all of the computers in question. Despite repeated inquiries to both Mr. Weaver and EMO Communications, she was unable to obtain status information on when the computers would be available for training. When the District began its initial inquiries into the matter, the Business Manager and Superintendent quickly identified the potential for criminal behavior and contacted Mayor Reed, who immediately contacted Harrisburg City Police and the Federal Bureau of Investigation (FBI).

⁴ A copy of the Press Release announcing the indictments is attached as Exhibit "1." More specifically, the indictments indicates that between April 2002 - when the FRN was approved by SLD - and May of 2003, Morrett and Weaver agreed that kickbacks totaling more than \$1.9 million were paid by Morrett to Weaver.

Appendix 1 - Harrisburg City School District Response

On December 8, 2003, the day that the criminal prosecutions of Mr. John Weaver and the President of EMO Communications, Inc. were announced, the District's representatives--Julie Tritt Schell and Debra Kriete--contacted George McDonald to inform SLD of the criminal charges, explain how E-rate was involved, and to outline to Mr. McDonald the District's cooperation that was ongoing with criminal authorities, and that the District's full cooperation likewise would be extended to the SLD, with the SLD investigations that the District anticipated would follow.

Also during the December 8, 2003 conversation, Ms. Tritt Schell and Ms. Kriete requested SLD to stop issuing any and all payments to EMO that may be pending. The District's representatives also faxed to Mr. McDonald the Press Release announcing the criminal indictments.

On December 10, 2003, Ms. Tritt Schell contacted the SLD's Director of Internal Audits, Ray Mendiola, to inform him of the Weaver/EMO criminal prosecution and charges. She faxed him a copy of the press release and other public materials that the U.S. Attorney for the Middle District of Pennsylvania had issued in connection with the Weaver/EMO prosecution, and provided her contact information to him. She informed him that the District fully cooperated with the FBI's investigation, and that the District wanted to work with the SLD's investigation as well. Mr. Mendiola indicated that he was glad to learn of the District's willingness to cooperate, and advised that the SLD would later contact the District.

On January 16, 2004, Ms. Tritt Schell was speaking with Merry Lawhead on another matter, and raised the Harrisburg SD investigation. She informed Ms. Lawhead that she and Debra Kriete were the District's new E-rate consultants and were eager to assist the SLD with their investigation in any way possible. Merry informed Ms. Tritt Schell that she could not discuss the case and that if SLD had any questions, SLD would contact the District.

In the spring of 2004, Ray M. Mendiola, CFE, contacted the District to request an in-person meeting in order for Mr. Mendiola to review all files and papers relating to Mr. Weaver's E-rate procurement during Funding Year 2001. The District hosted the meeting at its lawyers' offices as the files in question had been secured there at the commencement of the criminal investigation. The District fully cooperated with this request, and diligently pursued the follow-up request from Mr. Mendiola to obtain the electronic files from Mr. Weaver's computer. Because Mr. Weaver had erased the files at issue, the District engaged the services of forensic technology firm that recovered as many files as possible. Mr. Mendiola recently returned to the District lawyer's offices to review these files on March 22, 2005.

With the assistance of the District's new E-rate consultants (Schell and Kriete) since the fall of 2003, the District has established and implemented a full E-rate compliance plan to assure that all applications and forms submitted on behalf of the District (as well as those pending as of the fall of 2003) meet all program requirements and pass the intensive

Appendix 1 - Harrisburg City School District Response

scrutiny that the District anticipated SLD would perform following the Weaver/EMO announcement.

Specifically, Ms. Tritt Schell and Ms. Kriete were retained to provide E-rate consultation for Funding Years 2002, 2003, 2004 and 2005. At the District's request, they scrutinize all approved and pending FRNs for FY 2002 and FY 2003, to confirm whether the FRNs were fully supported by the District's documentation and in compliance with program rules. As a result:

- ✓ The District canceled three FRNs for FY 2003 following the consultants' review and determination that the District had not completed the procurement for the FRN, and canceled all EMO FRNs that were pending approval. In fact, when Loren Messina of the SLD's PIA review team contacted the District requesting additional information regarding the EMO FRNs in order to process the applications, we informed her on two separate occasions that there was an active SLD investigation into EMO and that we suggested she contact Ray Mendiola before proceeding with the processing of those FRNs.
- ✓ The District's consultants have worked fastidiously with Mick Kraft to confirm that various service provider invoices are accurate and legitimate and that various FRN service certification requests are properly documented relating to eligible equipment and services provided by Avaya, Inc. during FY 2002.⁵
- ✓ The District's consultants have worked to seek the approval of FY 2003 FRNs relating to maintenance service requests and voluntarily reduced the requested amount due to the uncovering of certain ineligible products covered under our maintenance contracts.

For Funding Year 2004 and 2005, the District prepared and comprehensive Requests for Proposals for almost all E-rate requests to ensure a fair and open competitive bidding process.

The District also implemented a comprehensive E-rate Compliance Plan that includes, but is not limited to:

- ✓ Preparation of a written RFP for any new technology procurements for priority 2 services and all major priority 1 procurements.
- ✓ Detailed review of prior invoices and SPIFs to assure program compliance.
- ✓ Research and validation of all FRNs for FY 2002, 2003 and 2004.

⁵ A copy of the District's correspondence dated March 29, 2004 concerning the Funding Year 2002 procurements is attached at Exhibit "2."

Appendix 1 - Harrisburg City School District Response

- ✓ Ongoing advice and instruction to the District on appropriate documentation and recordkeeping responsibilities.
- ✓ Advice and instruction to all District E-rate vendors regarding the documentation and records that the District requires its vendors to present to the District concerning all invoices and requests for payments from either the District or from the SLD.

The SLD likewise has conducted vigorous scrutiny of the District's pending Funding Year 2003 and 2004 Form 471 applications and conducted a Selective Review for both Funding Years. In addition, at the behest of District officials, the District's Business Administrator and its new Director of Technology met with the USAC Vice President of the Schools and Libraries Division and the Director of Program Integrity Analysis in August 2004, to review all of the corrective measures that the District instituted once the E-rate procurement and compliance responsibilities were removed from Mr. Weaver.

Following the meeting, the District provided a written itemization of the numerous internal control procedures now implemented for each step of the E-rate procurement and payment process.⁶ Each step involves multiple levels of review and oversight to assure the process is conducted openly and fairly, and in compliance with program rules. Different individuals are involved in the procurement process; the receipt of services; and, the payment authorization process. This structure assures that all transactions with vendors are conducted professionally and at arm's length.

The District also notified USAC's Office of General Counsel, Kristy Carroll in advance of the scheduling of Mr. Weaver's sentencing on March 1, 2005, to assure that USAC's interests would be properly represented at the hearing. Also as explained above, the District made certain that the \$1.977 million order of restitution designated USAC as the appropriate recipient of all funds recouped, and the District has opted to forego requesting that it receive any of these funds, notwithstanding the fact that the District has incurred significant expenses associated with the various investigations conducted by criminal law enforcement authorities and USAC.

The District is pleased to report that recently in the spring of 2005, it successfully passed both Selective Reviews, and received Funding Commitment Decisions Letters for its FY 2003 and 2004 applications. In short, the District has proven to the SLD that it has righted the course of its E-rate procurement and compliance program since the wrongdoings uncovered in Funding Year 2001, and the current inventory audit hopefully is the last step that the District must address in order to resolve finally all outstanding concerns regarding the Weaver-EMO Communications situation.

The District's activities to support and facilitate the criminal prosecutions of Mr. Weaver and Mr. Morrett, as well as to fully cooperate with USAC's investigations, has resulted in the District's incurrence of substantial expense, over \$100,000, which the District has been required to bear.

⁶ A copy of the District's correspondence dated October 11, 2004 is attached at Exhibit "3."

Appendix 1 - Harrisburg City School District Response

IV. Mr. Weaver Has Been Sentenced And Ordered to Make Criminal Restitution of \$1.977 Million to USAC.

On March 1, 2005, the United States District Court for the Middle District of Pennsylvania entered an award of restitution to USAC in the amount of \$1,977,516 during the sentencing of John Henry Weaver. Prior to sentencing, the District's counsel contacted and met with the assigned prosecutor from the United States Attorney's Office to express its position that, USAC as the primary victim, should receive all potential restitution to be awarded in this case.

The Federal district court adopted this recommendation and awarded restitution of nearly \$2 million to USAC and the E-rate program. Mr. Weaver will remain jointly and severally liable for the restitution award, along with Mr. Ronald Morrett and the additional defendants, who participated in this kickback scheme.

This restitution award represents the culmination of the District's cooperation with federal authorities' multi-year investigation into this matter. As noted during sentencing proceeding, the District's cooperation with respect to the investigation was immediate and has been unwavering. The amount of the criminal restitution order exceeds the value of the laptop servers (\$1,250,373.91) that the District received, and should be used to satisfy the District's obligation to return funds to USAC for these ineligible services.

V. All Funds Recovered to USAC Via the Criminal Restitution Award Should Be Credited Toward Satisfying Any Obligation of the District To Repay The \$1,250,373.91 of Ineligible Services That the District Received.

The District does not take issue with the premise that it is bound by the improper conduct of its former technology director who secured the delivery of E-rate ineligible services. This fundamental premise underlies the SLD's Inventory Audit and the related Exception it has issued. Likewise, the District should be credited with the criminal restitution payments required to be made by its former technology director in satisfaction of any actions to be taken by USAC to recover improperly disbursed funds from the District. The amount of the criminal restitution order, \$1,977,516 exceeds the value of the laptop servers (\$1,250,373.91) that the District received, and should be used to satisfy the District's obligation to return funds to USAC for these ineligible services.

Under the Fourth Report and Order in the Schools and Libraries Universal Service Support Mechanism proceeding,⁷ the FCC has made clear that USAC may pursue recovery actions against multiple parties in order to be made whole.⁸ In the situation

⁷ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration and Fourth Report and Order, FCC 04-181 (July 30, 2004).

⁸ *Id.* at ¶15: "We recognize that in some instances, both the beneficiary and the service provider may share responsibility for a statutory or rule violation. In such situations, USAC may initiate recovery action against both parties, and shall pursue such claims until the amount is satisfied by one of the parties."

Appendix 1 - Harrisburg City School District Response

where the service provider and applicant may both bear responsibility for the improper disbursement of funds, for example, the FCC has advised USAC that it may seek recovery from both parties until one party has satisfied the debt.⁹

The FCC's approach is consistent with federal common law and statutes, which prescribe that a victim, may not recover more than 100% of actual loss suffered, through restitution. 18 U.S.C. §3663; *United States v. Harris*, 7 F.3d 1537, 1539 (10th Cir. 1993); see also *United States v. Gottlieb*, No. 95-CR-40023-01 (April 3, 1998), *slip op.* at 6-7.

The Fourth Report and Order recognizes that USAC may seek repayment from either the applicant or service provider, or both parties. In the current situation, where USAC will recover funds through a restitution order against the District's former technology director, these funds should be credited toward any payments that the applicant District is required to pay, since the restitution order covers conduct that Mr. Weaver engaged in while employed with the District.

For all of the reasons set forth in this Response, the Harrisburg City School District respectfully requests that the SLD credit the District with these amounts recovered through the criminal restitution from John Weaver and refrain from ordering the District to incur any additional charges beyond the substantial costs already incurred in connection with the related criminal proceedings.

The District fully realizes the intense scrutiny that has befallen the E-rate program in recent years and sincerely apologizes that this situation may be cited as to how the program is not functioning as intended. Indeed, the District hopes that its conduct, upon discovering the fraud, can be used as an example of how the program *is* working and that fraud is detected and rectified promptly. The E-rate program is an amazing, invaluable initiative, and the District will work with elected officials to ensure that they understand that the fraud that was involved in this case is not rampant in the program, and should not cast a shadow over the immense benefits the program provides and has provided to schools and libraries over the last seven years. Not only are the program resources a major catalyst for improving education, particularly in poor, urban communities, but the planning that is required under the program truly makes schools consider technology and technology funding more strategically than ever before.

The District stands ready to address any questions that the Schools and Libraries Committee and the Board of the Universal Service Administrative Company. The District's consultants, Julie Tritt Schell and Debra Kriete, will be in Washington, DC in April 2005 during the week of the USAC board meetings and would appreciate the opportunity to address the Board at that time.

(Emphasis added). The FCC clearly contemplated that USAC's efforts should focus on being made whole, and not recovering more than 100% of the outstanding debt.

⁹ USAC appropriately has recognized the potential for recovery of more than the entire amount of the debt, and has sought additional guidance and clarification from the FCC to address these situations. See Proposed Audit Resolution Plan for Schools and Libraries Mechanism Auditees, October 28, 2004 at 6. ("USAC has sought guidance from the FCC on the following issues: ... 4) what action to take when both parties repay the funds.")

Exhibit 16

PETITION FOR REMISSION OR MITIGATION OF FORFEITURE

UNITED STATES v. JOHN HENRY WEAVER

1:03-CR-337-02

TO: THE ATTORNEY GENERAL OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
MIDDLE DISTRICT OF PENNSYLVANIA
C/O THOMAS A. MARINO, UNITED STATES ATTORNEY
HARRISBURG FEDERAL BUILDING AND COURTHOUSE, SUITE 220
228 WALNUT STREET
P.O. BOX 11754
HARRISBURG, PA 17108-1754

FROM: GEORGE MCDONALD
VICE PRESIDENT, SCHOOLS AND LIBRARIES DIVISION
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
2000 L ST., NW, SUITE 200
WASHINGTON, DC 20036

TAXPAYER IDENTIFICATION NUMBER 223541162
(202) 776-0260

1. I, George McDonald, assert on behalf of the Universal Service Administrative Company ("USAC") that USAC is a victim of the offense committed by defendant John Henry Weaver, who was convicted in the United States District Court for the Middle District of Pennsylvania in the case captioned United States of America vs. John Henry Weaver, Case Number 1:03-CR-337-02. USAC paid a total of \$14,492,641.28 to EMO Communications, Inc. ("EMO Communications") for equipment and services believed to have been provided to Harrisburg City School District ("Harrisburg"). USAC has determined that it paid a total of \$6,150,760 to EMO Communications for equipment and services that were not provided and for equipment that was not eligible for E-rate

Program funding.

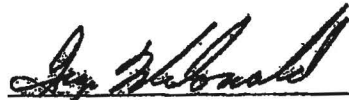
2. USAC has been provided with a copy of the Information in this case, and from that document understands that Weaver was charged with receiving kickbacks from EMO Communications exceeding \$1,900,000 for falsely certifying that work had been performed. USAC has been provided with a copy of the Judgment in a Criminal Case ("Judgment") for this case, and from that document understands Weaver to have pled guilty to Conspiracy to Engage in Bribery in a Federally Funded Program, and Criminal Forfeiture. As stated above, USAC paid \$14,492,641.28 to EMO Communications for equipment and services believed to have been provided to Harrisburg. Based on the court filings in this case, USAC understands that Weaver and two defendants in two related cases will pay \$1,977,516 to USAC in restitution. USAC performed an audit of the equipment and services believed to have been provided by EMO Communications to Harrisburg for which USAC paid EMO Communications, and has determined that USAC paid a total of \$6,150,760 to EMO Communications for equipment and services that were not provided and for equipment that was not eligible for E-rate Program funding. Since USAC paid for equipment and services that were not provided and for equipment not eligible for E-rate Program funding, these funds should be restored to USAC. Attached to this petition is a declaration and documentation supporting this determination.
3. USAC has not attempted to recover these funds directly from EMO

Communications. USAC intends to seek recovery of the balance of the funds not covered by the Court's Judgment that USAC has determined it paid for equipment and services that were not provided, and for equipment not eligible for E-rate Program funding -- \$4,173,244 (\$6,150,760 - \$1,977,516) -- from BMO Communications and/or Harrisburg consistent with FCC rules and requirements and any other applicable law. USAC is unaware of any other assets of the defendants against which it might have recourse.

4. I affirm that, if USAC receives any compensation for its losses directly from the defendants, I will immediately notify the official who grants this petition (if it is granted) of that fact.
5. I understand that this petition will be governed by the regulations, including definitions of terms such as "victim" and "related offense," set forth in 28 C.F.R. § 9.1 et seq.
6. I declare under penalty of perjury that the foregoing is true and correct.

Executed on

30 Mar 2005



George McDonald
Vice President, Schools and Libraries Division
Universal Service Administrative Company
2000 L St., N.W., Suite 200
Washington, DC 20036

DECLARATION OF GEORGE MCDONALD

IN SUPPORT OF

PETITION FOR REMISSION OR MITIGATION OF FORFEITURE

United States v. John Henry Weaver

Case Number 1:03-CR-337-02

1. I am over eighteen years of age, and I make the following declaration on my own knowledge and upon the business records of the Universal Service Administrative Company ("USAC").
2. I am a Vice President of USAC, and I am responsible for USAC's Schools and Libraries Division ("SLD"). I have held that position since September 2001. From December 1997 to September 2001, I was the Director of Operations of the SLD.
3. USAC is a private, not-for-profit corporation, organized under the laws of Delaware that was created at the direction of the Federal Communications Commission ("FCC"). Its Board of Directors is selected by the Chairman of the FCC. The FCC has designated USAC by federal regulation as the administrator of the universal service support mechanisms established pursuant to 47 U.S.C. § 254. *See* 47 C.F.R. § 54.701 (2003). USAC has been delegated the responsibility by the FCC to collect mandatory contributions from telecommunications carriers and distribute those funds as required to support universal service mechanisms specified by law. *Id.* USAC's sole function is to administer federal universal service support mechanisms, including the Schools and Libraries Support Mechanism, which is popularly known as the "E-Rate Program." *See* 47 C.F.R. §§ 54.701, 54.702. The SLD is organized as a division within USAC to administer the E-Rate Program.

4. The E-Rate Program provides universal service support funds ("funds" or "funding") to eligible telecommunications providers and non-telecommunications service providers (generally "service providers") so that they can provide eligible services to eligible schools, school districts and libraries (generally "eligible entities" or "applicants") in the United States at discounted rates. See 47 U.S.C. § 254(b)(6); 47 C.F.R. §54.517. Three service categories are funded by the E-Rate Program: telecommunications services, Internet access services, and the internal connections necessary to permit eligible entities to access the Internet and telecommunications services. Discounts funded by the E-Rate Program range from 20% to 90% of the costs of eligible services, depending on the level of poverty and the urban/rural status of the population served by the eligible entity.

5. An applicant applies for funding by submitting one or more FCC Form(s) 471 to USAC for each funding year for which it seeks discounts. See 47 C.F.R. § 54.504(c); 54.507(d); Schools and Libraries Universal Service, Services Ordered and Certification Form 471, OMB 3060-0806 (*FCC Form 471*). Each FCC Form 471 contains one or more Funding Request Numbers (FRNs). Each FRN requests funding in a certain amount for equipment and/or services to be provided by a particular service provider. After completing its review of the applicant's FCC Form 471, USAC issues one or more Funding Commitment Decision Letters ("FCDLs") setting out USAC's decisions with respect to each of the applicant's separately identified funding requests.

6. To receive disbursements from USAC, service providers may submit the Service Provider Invoice Form to USAC. See Universal Service for Schools and Libraries, Service Provider Invoice Form, OMB 3060-0856 (*FCC Form 474*). Service providers are required to have a Service Provider Identification Number ("SPIN") in order to receive disbursements

from USAC. To obtain a SPIN, service providers submit an FCC Form 498, Service Provider Information Form, to USAC. *See* Universal Service Administrative Company, Service Provider Information Form 498, OMB 3060-0824 (*FCC Form 498*). The FCC Form 498 for EMO Communications Inc. (EMO Communications) indicates that its SPIN is 143023021 and that its President is Ron Merrett. (Attachment 1).

7. USAC performed an audit of the equipment and services believed to have been provided by EMO Communications to Harrisburg City School District ("Harrisburg") for which USAC paid EMO Communications, and has determined that of the \$14,492,641.28 paid to EMO Communications, USAC paid \$6,150,760 to EMO Communications for equipment and services not provided, and for ineligible equipment. (Attachment 2).

8. USAC records show that Harrisburg submitted FCC Form 471 # 256221 requesting funding for FRN 639696 for equipment and services to be provided by EMO Communications. (Attachment 3). USAC's Funding Commitment Decision Letter ("FCDL") shows that USAC agreed to provide the funding as indicated in the FCDL. (Attachment 4).

9. On October 30, 2002, USAC received an FCC Form 474 from EMO Communications. (Attachment 5). On this FCC Form 474, EMO sought payment of \$4,077,075.20 for equipment and services provided to Harrisburg. (Attachment 5). Harrisburg certified that the equipment and services for which EMO Communications sought payment related to FRN 639696 had been provided. (Attachment 6). USAC paid \$4,077,075.20 to EMO Communications via Check # 0120032864 dated November 26, 2002 in response to this request. (Attachment 7).

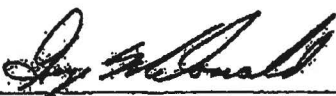
10. On January 21, 2003, USAC received an FCC Form 474 from EMO Communications. (Attachment 8). On this FCC Form 474, EMO sought payment of \$2,073,684.80 for

equipment and services provided to Harrisburg. (Attachment 8). Harrisburg certified that the equipment and services related to FRN 639696 had been provided. (Attachment 9). USAC paid \$2,073,684.80 to EMO Communications via Check # 0130046648 in response to this request. (Attachment 10).

11. Of the \$14,492,641.28 USAC disbursed to EMO Communications, USAC disbursed a total of \$6,150,760 for equipment and services not provided and for equipment that was not eligible for E-rate Program funding.

12. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 30 MAR 2005


George McDonald
Vice President, Schools and Libraries Division
Universal Service Administrative Company
2000 L St., N.W., Suite 200
Washington, DC 20036

DECLARATION OF GEORGE MCDONALD

IN SUPPORT OF

PETITION FOR REMISSION OR MITIGATION OF FORFEITURE

United States v. WEAVER

LIST OF ATTACHMENTS

Attachment 1	FCC Form 498 for EMO Communications LLC
Attachment 2	Schools and Libraries Investigative Report - Harrisburg City School District, March 10, 2003
Attachment 3	FCC Form 471 # 256221 submitted by Harrisburg City School District
Attachment 4	Pending Commitment Decision Letter for FCC Form 471 # 256221 dated April 19, 2002
Attachment 5	FCC Form 474 submitted to USAC by EMO Communications, October 30, 2002
Attachment 6	[REDACTED]
Attachment 7	USAC Remittance Statement and Cancelled Check # 0120032864
Attachment 8	FCC Form 474 submitted to USAC by EMO Communications, January 23, 2003
Attachment 9	[REDACTED]
Attachment 10	USAC Remittance Statement and Cancelled Check # 0130045648